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SUPERIOR COURT OF THE STATE OF WASHINGTON
WHATCOM COUNTY

SCOTT HILLIUS; et al.
Plaintiffs,

v.

18 PARADISE, L.L.P. and MJ
MANAGEMENT, LLC;
Defendants,

MJ MANAGEMENT, LLC,
Counterclaimant.

MAUREEN AND ROGER DOWLING, a
married couple, et. al.
Intervenors.

Case No.: 20-2-00701-37

**MJ MANAGEMENT’S MOTION FOR
RECONSIDERATION OF THE
COURT’S FINAL FINDINGS OF
FACT AND CONCLUSIONS OF LAW,
AND FINAL ORDER.**

Defendant, MJ MANAGEMENT, LLC, by and through its attorneys of record, JEFFREY POSSINGER of POSSINGER LAW GROUP PLLC, and attorney REID E. MEYERS, asks the Court to reconsider and amend its Findings of Fact and Conclusions of Law and Final Order (the “Final Order”) finding the Sixth and Seventh Amendments to the Homestead Master Declaration were void *ab initio* and dismissing MJ Management’s Declaratory Counterclaim.

I. INTRODUCTION

The Court’s Final Order concluded that the Sixth and Seventh Amendment were void *ab initio* because under the terms of the Management and Lease Agreement MJ Management had to

1 obtain 18 Paradise’s express permission before signing and recording amendments to the Master
2 Declaration. But the Court’s conclusion is untenable, because no such requirement is set out in the
3 terms of the written Management and Lease Agreement. Instead, if that requirement exists at all,
4 it arises from the other agreements between MJ Management and 18 Paradise entered following
5 the execution of the Management and Lease Agreement.

6 Consistent with portions of its Final Order, the Court previously found in its Order Granting
7 the Defendants Joint and Renewed Motion for Partial Summary Judgement re: Consumer
8 Protection Act (the “CPA Order”) that

9 [t]he original declarant had the ability to, and did in fact, reserve the
10 right to amend the covenants. See generally Lakemoore Country
11 Club, Inc. v. Swanson, 24 Wn. App. 10 (1979). The filing of the
12 original Master Declaration and the CCR’s provided landowners
13 notice of the reservation of authority by the Declarant. See
14 Mohandessi v. Urb. Venture, LLC, 13 Wn. App. 2d 681, 698 (2020).
15 Moreover, the subsequent recording of [the Sixth and Seventh
16 Amendments] also provided notice to prospective purchasers. As
17 such, the allegations contained in the Fifth Amended Complaint and
18 the reasonableness of the Sixth and Seventh Amendments to the
19 CCRs involve a fixed set of parties, i.e. those individuals with an
20 ownership interest at the time of the amendments. Subsequent
21 purchasers may be impacted by the rise in fees, but they do so with
22 notice and acceptance of those terms at the time of purchase.

23 CPA Order at 4, ¶3. In so finding, the Court determined that 18 Paradise had the reserved right to
24 amend the Master Declaration, recognizing that a rise in fees may impact subsequent purchasers,
25 and have done so with notice and acceptance of those terms. The Court also correctly found in its
26 Final Order that 18 Paradise had assigned Declarant rights to MJ Management through the
27 Management and Lease Agreement and subsequent agreements between them. Notwithstanding
28 its assignment (with a reversionary interest in those rights), 18 Paradise as a successor Declarant
reserved for itself rights such that would have allowed them to record the Sixth and Seventh
Amendments. This is the law of the case. The relevant finding in this instance is whether in

1 assigning those Declarant rights to amend the Master Declaration, did 18 Paradise place any
2 restrictions on MJ Management in their exercise of those Declarant rights.

3 During the 30(b)(6) deposition of 18 Paradise's designated agent Raymond Chou,
4 testimony by Mr. Chou regarding MJ Management's requirements under the Management and
5 Lease Agreement, particularly around the question about requirements 18 Paradise placed on MJ
6 Management for prior approval for the recording of the Sixth and Seventh Amendments to the
7 Master Declaration, Mr. Chou's testimony was not clear. Operating under significantly more
8 liberal rules governing discovery, Plaintiff's counsel asked Mr. Chou a series of confounding
9 questions, which conflated various issues, but intended to obtain admissions from Mr. Chou about
10 the language contained strictly within the four corners of the Management and Lease Agreement.

11 In its Final Order, the Court correctly found that 18 Paradise, as part of its other agreements
12 with MJ Management, had assigned its right as the Declarant to MJ Management to amend the
13 Master Declaration. But then the Court also concluded that this right required 18 Paradise's prior
14 approval by relying on Mr. Chou's testimony during his 30(b)(6) deposition. And giving it more
15 weight than both his trial testimony, and Josh Williams and Mick O'Bryan's consistent trial
16 testimony. That the Court relied on one part of Mr. Chou's deposition testimony is even more
17 untenable because Mr. Chou's deposition testimony included contrary responses, namely that MJ
18 Management was expected to handle such amendments themselves and they did not need prior
19 approval. The testimony at trial was consistent between MJ Management and 18 Paradise; 18
20 Paradise was simply an absentee landlord and had assigned most Declarant rights to MJ
21 Management under the Management and Lease Agreement and the subsequent agreements
22 between the parties.

23 **II. STATEMENT OF FACTS**

24 At trial, Plaintiffs' Counsel repeatedly questioned Mick O'Bryan about the scope and type
25 of relationship that MJ Management had with 18 Paradise. Plaintiffs' Counsel's multiple lines of
26 questioning attempted to establish that MJ Management was 18 Paradise's agent, and thus never

1 had the authority to enact the Sixth and Seventh Amendments to the Master Declaration, because
2 MJ Management was not itself the Declarant. Defendants' Counsel strenuously objected that Mr.
3 O'Bryan was not a lawyer and did not have the legal training that would allow him to answer the
4 questions being posed while understanding the impact of his potential answers. Exhibit A: May 9,
5 2024, Trial Transcript Excerpts, 4:20-21; 12:15-16; 13:6-7. Plaintiffs' Counsel kept trying to elicit
6 a legal conclusion from a lay witness.

7 The Court reassured the Defendants that a layperson's testimony about legal conclusions
8 was not going to affect the Court's decision because it understood that Mr. O'Bryan was not a
9 lawyer and the questioning was to find facts, not resolve legal questions. Id. at 12:17-23. In further
10 questioning Mr. O'Bryan testified that MJ Management was not 18 Paradise's agent, but instead
11 18 Paradise had assigned MJ Management Declarant rights during the entities' ongoing
12 relationship beginning with the Management and Lease Agreement. Id. at 7:23-8:3.

13 In his trial testimony, Mr. Williams testified that during his tenure with MJ Management,
14 the parties had ongoing conversations and subsequent agreements about the property following the
15 execution of the Management and Lease Agreement. Exhibit B: May 7, 2024, Trial Transcript
16 excerpts, 12:1-11; 21:20-22:5. During those conversations they discussed the scope of MJ
17 Management's role. Through those conversations and resulting agreements, 18 Paradise delegated
18 more of its Declarant rights to MJ Management to run Homestead, so that MJ Management did
19 not have to ask permission to act, and instead to let 18 Paradise enjoy being an absentee landlord.
20 Id. at 27:1-28:9; 53:1-20; 57:17-58:8. Mr. Williams testified that 18 Paradise assigned MJ
21 Management the right to amend the Master Declaration including setting the maintenance fees.
22 MJ Management did not seek 18 Paradise's prior approval to execute the Sixth and Seventh
23 Amendment because they understood they did not need to. 18 Paradise had assigned it those rights.

24 At trial, Raymond Chou testified for 18 Paradise at trial remotely. Mr. Chou was in British
25 Columbia and could not attend in person to testify. Plaintiffs' Counsel argued that the Court should
26 not let Mr. Chou testify remotely. Plaintiffs' Counsel argued instead that the Court need only rely

1 on excerpts from 18 Paradise’s 30(b)(6) deposition, which they wished to publish into the court
2 record. They argued, unsuccessfully, that Zoom was an inferior means to examine a witness and
3 deposition testimony was a sufficient alternative to Mr. Chou’s live testimony. 18 Paradise argued
4 that Zoom was as effective as appearing in-person and that live testimony was superior to a
5 deposition transcript. The Court compromised on Plaintiffs’ and 18 Paradise’s positions. Mr. Chou
6 provided live testimony via Zoom, which WCGR 19(2)(g)¹ allowed, and as Washington allows
7 Zoom depositions, Chou’s testimony should be weighed equally to live testimony in Court. The
8 Plaintiffs and 18 Paradise then provided excerpted deposition testimony for the Court to review.

9 When 18 Paradise examined Mr. Chou, he explained that 18 Paradise gave MJ
10 Management the authority to set the amount of the joint maintenance fee, to collect the joint
11 maintenance fee, without 18 Paradise’s prior approval. Exhibit C: May 3, 2024, Trial Transcript
12 Excerpts, 23:12-24:15. He was clear that 18 Paradise was an absentee landlord and had given MJ
13 Management the authority it needed to run the property without 18 Paradise’s supervision or
14 control. Id. 18 Paradise simply received a rental payment from MJ Management and expected MJ
15 Management to manage “it,” whatever the “it” was for managing Homestead. Mr. Chou also gave
16 unrefuted testimony that he was involved with the negotiations between 18 Paradise and MJ
17 Management and had personal knowledge about both the Management and Lease Agreement
18 negotiations and continued discussions and agreements between the parties. Id. at 18:13-19; 20:23-
19 21:2; 27:11-15.

20 As noted above, Plaintiffs and 18 Paradise designated parts of 18 Paradise’s 30(b)(6)
21 deposition testimony—Mr. Chou testified as 18 Paradise’s designated representative—for the
22 Court to review. The parties highlighted conflicting testimony for the Court contained in Mr.
23 Chou’s deposition testimony. Plaintiffs highlighted where Mr. Chou said MJ Management did not
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27 ¹ Whatcom County Local Rules that were in effect during trial (effective September 1, 2023).

1 get 18 Paradise's approval to execute the Sixth and Seventh Amendments.² See Trial Exhibit 51:
2 30(b)(6) Deposition Transcript at 78:21-24. 18 Paradise highlighted where Mr. Chou said that 18
3 Paradise was not involved because MJ Management had the authority to set the joint maintenance
4 fee. See Trial Exhibit 51: 30(b)(6) Deposition Transcript at 79.2-80:3. In reading the deposition
5 transcript it is clear that Plaintiffs' Counsel tried to confuse Mr. Chou over the difference between
6 18 Paradise's role as Declarant and MJ Management's role as Declarant's Assignee. See Trial
7 Exhibit 51: 30(b)(6) Deposition Transcript at 49:15-50:16 (Plaintiff's Counsel ignores that §8.2.1
8 lets the Declarant, its successors, and assigns amend the Master Declaration so long as the
9 Declarant owns the Common Open Space.) (Emphasis added).

10 Near the end of trial, the Court asked that the parties wait to submit proposed findings and
11 conclusions until after its oral ruling. MJ Management, 18 Paradise, and the Intervenors followed
12 the Court's instructions; they did not provide any proposed language to the Court before the court
13 had ruled. Plaintiffs, on the other hand, sent the Court their proposed findings and conclusions
14 before Trial had even concluded.

15 MJ Management (and by extension, 18 Paradise and the Intervenors) were left in the
16 impossible position: Either follow the Court's instructions and let Plaintiffs' proposed findings
17 and conclusions go uncontested. Or violate the Court's instructions and provide the Court with
18 their own proposed findings and conclusions. MJ Management deferred to the Court and opted for
19 the latter. MJ Management had to hope that the Court would not rely in any way on Plaintiffs error-
20 laden proposed findings and conclusions.

21 Months later, when the Court issued its oral ruling, the Court informed the parties that it
22 had reviewed Plaintiffs' proposed findings and conclusions. Whether and to what extent the Court
23 relied on Plaintiffs' proposed findings and conclusions in reaching its initial oral ruling is
24 unknown. At minimum, the fact that the Court reviewed Plaintiff's unchallenged proposed

25 _____
26 ² The Court may recall that in both the deposition of Mr. Chou and other examination of witnesses at trial, Plaintiff's
27 counsel regularly conflated the question of whether MJ Management had sought and obtained approval from 18
28 Paradise and whether MJ Management required approval. This was the source of several sustained objections at trial.

1 findings and conclusions before articulating its ruling raises the issue of whether this prejudiced
2 MJ Management, and to a lesser extent 18 Paradise and the Intervenors.

3 Weeks later, at the hearing to present final orders, the Court rejected the Plaintiffs'
4 Proposed Findings of Fact and Conclusions of Law. Instead, the Court adopted MJ Management,
5 18 Paradise and the Intervenors' Proposed Joint Findings and Conclusions. The Court specifically
6 concluded that the joint Findings and Conclusions more accurately reflected both the trial and the
7 Court's decision. At that hearing, the Court also had the opportunity to read a press release from
8 Plaintiffs' Counsel about how they intended to use the Court's Order to bring further litigation and
9 challenge the Court's prior rulings, including challenging that the Court's decision regarding the
10 Consumer Protection Act claims that the Court had previously dismissed.

11 In the Court's Final Order, the Court found that while 18 Paradise had in fact assigned
12 Declarant rights to MJ Management, the Sixth and Seventh Amendments were void. The Court's
13 sole reason for finding both amendments void was because the Court found that the Management
14 and Lease Agreement required MJ Management obtain 18 Paradise's prior approval. The Court
15 also concluded, 18 Paradise' 30(b)(6) designee said that MJ Management needed 18 Paradise's
16 prior approval; a single response to a question made in a highly contentious deposition.

17 In the Final Order, the Court did not say where in the Management and Lease Agreement
18 it found that MJ Management had to obtain 18 Paradise' prior approval to amend the Master
19 Declaration. The Court's ruling does not explain why it considered the single line in 18 Paradise's
20 30(b)(6) deposition dispositive when, at several other points in the same deposition, 18 Paradise's
21 designee stated that MJ Management did not need 18 Paradise's prior approval to execute the Sixth
22 and Seventh Amendments.

23 **III. ISSUES PRESENTED**

24 1. Whether the Court should reconsider how it reached its oral ruling when the Court
25 prejudiced MJ Management by relying on Plaintiffs' one-sided and inaccurate Findings of Facts
26 and Conclusions of Law which the Court explicitly directed the parties not to provide before the
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1 ruling, and the Court later rejected those same Findings and Conclusions because it inaccurately
2 captured what happened at trial and the issues presented? Short Answer: YES.

3 2. Whether the Court should reconsider how the Court weighed the parties'
4 evidence—including 18 Paradise's 30(b)(6) deposition testimony—explaining what 18 Paradise
5 and MJ Management understood about MJ Management and 18 Paradise's relationship? Short
6 Answer: YES.

7 3. Whether the Court should find that it erred in its findings and legal conclusions
8 when it relied on an inapplicable clause in the Management and Lease Agreement to find a prior
9 approval requirement that does not exist and ignored the overwhelming weight of the testimony
10 from every lay witness for both MJ Management and 18 Paradise at trial that under the
11 Management and Lease Agreement and the subsequent agreements, MJ Management did not need
12 18 Paradise's prior approval to record the Sixth and Seventh Amendments? Short Answer: YES.

13 4. Whether the Court should instead find that the weight of evidence inevitably leads
14 to the finding and legal conclusion that MJ Management did not need 18 Paradise's prior approval
15 to use its assigned Declarant rights to amend the Master Declaration to raise the funds necessary
16 to manage the property and pay for the common benefits they were expected to provide for
17 Homestead and the Homeowners? Short Answer: YES.

18 5. Whether the Court should conclude that MJ Management's Declaratory
19 Counterclaim is valid, that MJ Management prevails on its counterclaim and that MJ Management
20 may collect the monthly maintenance fee from the Homeowners at \$93.00 a month up through the
21 date that MJ Management was evicted from Homestead? Short Answer: YES

22 **IV. EVIDENCE RELIED UPON**

23 This Motion relies on the Declared Transcriptionist Exhibits, and the Papers and Pleadings
24 on file in this matter, and the authority cited in this motion.

25 **V. AUTHORITY AND ARGUMENT**

26 **A. Legal Standard for Motions for Reconsideration.**

1 CR 59(a) governs a Motion for Reconsideration of a final order. “On a motion of the party
2 aggrieved... any other decision or order may be vacated and reconsideration granted.” CR 59(a).

3 The rule in relevant part states:

4 Such Motion may be granted for any one of the following causes
5 materially affecting the substantial rights of such parties:

6 (7) That there is no evidence or reasonable inference from the
7 evidence to justify the verdict or the decision, or that it is contrary
8 to law;

8 (8) Error in law occurring at the trial and objected to at the time by
9 the party making the application; or

9 (9) That substantial justice has not been done.

10 For this Motion, MJ Management relies on sub-parts (7), (8), and (9). First, that there is no
11 evidence or reasonable inference from the evidence to justify the decision, or that it is contrary to
12 law. Second, [e]rror in law occurring at the trial and objected to at the time by the party making
13 the application. And finally, [t]hat substantial justice has not been done. The trial court enjoys
14 broad discretion in deciding how to rule on a motion for reconsideration. In a bench trial, “the
15 court may open the judgement if one has been entered... make new findings and conclusions and
16 direct the entry of a new judgment.” CR 59(g).

17 1. Evidentiary Standard for the Court to Overturn its Prior Ruling after
18 Reconsideration.

19 The trial court must rely on substantial evidence for its findings of fact and conclusions of
20 law. Then if supported by substantial evidence, an appellate court will next question whether the
21 findings of fact support the conclusions of law and the judgment. Scott v. Trans-Sys., Inc., 148
22 Wn.2d 701, 707-08, 64 P.3d 1 (2003). Findings of fact are reviewed under a substantial evidence
23 standard, defined as a quantum of evidence sufficient to persuade a rational fair minded person the
24 premise is true. Wenatchee Sportsmen Ass'n v. Chelan County, 141 Wn.2d 169, 176, 4 P.3d 123
25 (2000). If there is not substantial evidence to support the Court’s findings, a court of appeals may
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1 overturn the decision and remand back to the trial court for findings and conclusions consistent
2 with that determination.

3 **B. The Court Should Reconsider its Conclusion that MJ Management Needed 18**
4 **Paradise’s Prior Approval to Record the Sixth and Seventh Amendments. MJ**
5 **Management and 18 Paradise Presented Substantial Evidence that the Sixth**
6 **and Seventh Amendment Did Not Require Prior Approval.**

7 1. There is not substantial evidence that MJ Management needed 18 Paradise’s
8 prior approval to record the Sixth and Seventh Amendments.

9 18 Paradise’s 30(b)(6) deposition was combative and as a result Mr. Chou’s testimony was
10 inconsistent. The Court may recall from trial that Plaintiffs’ Counsel regularly asked lines of
11 questions intended to trap witnesses with semantic word games. Plaintiffs’ Counsel regularly
12 repeated essentially the same questions, changing only one or two words that entirely shifted the
13 meaning, seeking an admission from the witness that was far afield from the initial question asked.³
14 Even a cursory review of Raymon Chou’s deposition transcript, which the Court relied on, reveals
15 this deposition was freewheeling, contentious, and riddled with objections. Indeed, during trial,
16 the Court accepted Defendants’ Counsel’s position that Plaintiffs’ Counsel’s style of questioning
17 drew several “asked and answered” objections as Plaintiffs’ Counsel sought for a soundbite. The
18 Court sustained these objections at trial.

19 During 18 Paradise’s 30(b)(6) deposition, Plaintiffs’ Counsel repeatedly peppered Mr.
20 Chou with vague and confusing questions that seemed designed to conflate the Declarant with the
21 Declarant’s Assignee, specific authorization with assigned authority under the Management and
22 Lease Agreement, and 18 Paradise’s involvement with decisions that Plaintiff’s Counsel posited
23 that 18 Paradise needed to approve. For example, Plaintiffs’ Counsel ignored specific language in
24 Master Declaration §8.2.1 and then pressured Mr. Chou to agree with him that “only the Declarant

25 ³ The Court may also take judicial notice that earlier in this case, the Court held an Evidentiary Hearing related to a
26 similar concern involving Plaintiff’s Counsel; namely that in Plaintiffs’ Counsel’s attempt to depose O’Bryan and
27 Williams in the context of the Motion to Disqualify, the Court wanted to set “guardrails” on the questions asked,
28 because the evidentiary rules for trial are much more restrictive than the freewheeling and free flowing questions that
can be asked (and must be answered) in a deposition.

1 can set the new maintenance fee...”⁴ See Trial Exhibit 51: 30(b)(6) Deposition Transcript at 76:10-
2 76:19. Counsel then asked if MJ Management or 18 Paradise was the Declarant. Id. When Mr.
3 Chou answered that 18 Paradise was not involved with the Sixth and Seventh Amendments and
4 didn’t approve it beforehand (because they had assigned those rights and did not need to be
5 involved), Plaintiffs’ Counsel contorted Chou’s answer into saying that recording the amendments
6 was done without 18 Paradise’s knowledge and then without their authority. Id. at 76:20-77:3.
7 Another example of Plaintiff’s Counsel engaging in semantic word games with a deponent.

8 At deposition, Plaintiffs’ Counsel asked whether MJ Management had “authority” to
9 record the Sixth and Seventh Amendments. Id. at 77:14-77:17. Mr. Chou’s answer was that they
10 did not have “authorization.” But “authorization” and “authority” are different. It was unclear from
11 the question asked whether Plaintiffs’ Counsel was asking about “specific authorization” or
12 whether 18 Paradise assigned Declarant rights to MJ Management. Id. Again, Plaintiff’s Counsel
13 engaging in semantic word games with a deponent.

14 Later Mr. Chou clarified his answer, that MJ Management did not get approval from 18
15 Paradise because MJ Management’s authority to amend the Master Declaration arose out of their
16 duties and rights under the Management and Lease Agreement. See Trial Exhibit 51: 30(b)(6)
17 Deposition Transcript at 79:2-4 and 79:19-80:3. When asked clear questions, Mr. Chou’s
18 testimony was that MJ Management did not need 18 Paradise’s approval to amend the Master
19 Declaration.

20 When Plaintiffs’ Counsel re-examined him and abandoned the hyper-technical questioning
21 Mr. Chou’s answers were again clear. “Q: Did [MJ Management] or did they not have the authority
22 to sign for 18 Paradise to amend the [master] declaration? A: Yeah, they had the authority, but
23 they did not get our approval to sign that, right, so nothing had been put to us before amendment.”
24 Trial Exhibit 51: 30(b)(6) Deposition Transcript at 82:6-10. A full reading of Raymond Chou’s
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26 ⁴ Not only does this misread the Master Declaration, but Plaintiffs also undercut their own position by stipulating that
27 MJ Management reset the maintenance fee twice under the Management and Lease Agreement.

1 deposition and trial testimony makes 18 Paradise’s position clear; MJ Management did not seek
2 approval for the Amendments to the Master Declaration, because they did not need to.

3 When Plaintiffs’ Counsel asked him “Q: MJ Management was authorized under the lease
4 management agreement to cause the lease—the declaration to be amended in the name of and by
5 18 Paradise? A: Yes.” See Trial Exhibit 51: 30(b)(6) Deposition Transcript at 84:4-10.

6 Plaintiffs’ Counsel then questioned Mr. Chou about MJ Management’s “authority” or
7 “authorization” for the Sixth and Seventh Amendments until he finally got the soundbite he
8 wanted. Earlier in Chou’s Deposition, before the cherry-picked quote that Plaintiffs put into
9 evidence, Mr. Davis repeatedly asked Mr. Chou whether MJ Management had “authority” to sign
10 for 18 Paradise. But Mr. Davis’s questions conflated different issues, because in executing the
11 Sixth and Seventh Amendments, MJ Management was not signing for 18 Paradise, because as the
12 Court correctly concluded, MJ Management was not 18 Paradise’s agent. Only an agent, not an
13 assignee, would sign on another entity’s behalf. For example, Plaintiffs’ Counsel asked whether
14 anyone or anything else has the right to amend the declaration. Mr. Chou answered that 18 Paradise
15 did not know. Trial Exhibit 51: 30(b)(6) Deposition Transcript at 21:16-18. Later, Plaintiffs’
16 Counsel asked: “Did 18 Paradise intend to make MJ Management the declarant or did it intend to
17 delegate to MJ Management the power to exercise 18 Paradise’s declarant rights.” Mr. Chou
18 responded that he did not understand the difference. Trial Exhibit 51: 30(b)(6) Deposition
19 Transcript at 34:7-14. Putting aside that 18 Paradise had assigned—not delegated—Declarant
20 rights, Mr. Chou was already confused by the complex legal questioning around the difference
21 between the Declarant, the Declarant’s Assignee, and the meaning of “authorization,” “authority,”
22 and “power to act independently.” As a lay witness, Plaintiffs’ Counsel sought legal conclusions
23 in Mr. Chou’s answers.

24 Likewise, Mr. Chou got caught up on form over substance when discussing MJ
25 Management’s role recording the Amendments to the Master Declaration. When asked by
26 Plaintiffs’ Counsel if William O’Bryan was allowed to sign to record the Sixth Amendment on 18

1 Paradise’s behalf, Mr. Chou said “No.” See Trial Exhibit 51: 30(b)(6) Deposition Transcript at
2 46:9-18. But the question presumed that MJ Management was acting on 18 Paradise’s behalf. It
3 wasn’t. As an assignee, it was exercising its own powers. Another example of Plaintiffs’ Counsel’s
4 semantic word games with the deponent.

5 Indeed 18 Paradise was quite clear that MJ Management was allowed to do what it needed
6 to do around Homestead. “I mean, we don’t care about their business operation as long as their
7 business is operational.” Trial Exhibit 51: 30(b)(6) Deposition Transcript at 72-14-15. At trial, the
8 Court heard hours of testimony from Mick O’Bryan, Josh Williams, and experts for both MJ
9 Management and 18 Paradise that the Sixth and Seventh Amendments were part of MJ
10 Management’s efforts to make Homestead an operational business.

11 Again, in Raymond Chou’s Deposition, the questioning about 18 Paradise’s role in
12 approving or not approving the maintenance fees; Plaintiffs’ Counsel begins by critically
13 misreading the Master Declaration. See Trial Exhibit 51: 30(b)(6) Deposition Transcript at 76:10-
14 24. MJ Management was not the Declarant, but it had assigned Declarant Rights, including the
15 right to set the Joint Maintenance Fees; Plaintiff’s Counsel then used in his questioning the fact
16 that 18 Paradise did not get involved to assume that this was because MJ Management took actions
17 without approval. Id.

18 In a line of clarifying questions, Mr. Chou was clear,

19 Q: the Sixth and Seventh Amendments related to the Maintenance
20 fee, correct?

21 A: Yes.

22 Q: And was the authority to record the sixth and the seventh
23 amendments defined by the lease?

24 A: Yes

25 Q: And did 18 Paradise consider the reporting (sic.) of those
26 documents to be withing MJ’s authority under the lease?

27 A: Yes.

1 See Trial Exhibit 51: 30(b)(6) Deposition Transcript at 79:19-80:3. It can't really be clearer than
2 that. 18 Paradise considered recording the Sixth and Seventh Amendments to be within MJ
3 Management's powers under the lease⁵.

4 The cherry-picked answer Plaintiffs provided the Court came from a very contentious
5 deposition. More than once during the deposition, the attorneys involved had an extended objection
6 and argument over the fact that Mr. Chou had already clarified his answers on agency and
7 authorization or authority, and the Plaintiffs' Counsel insisted "I'll keep doing this as long as I
8 have to. I'll continue the deposition for tomorrow and the next day and the next..." Trial Exhibit
9 51: 30(b)(6) Deposition Transcript at 94:20-23.

10 2. At Trial, MJ Management and 18 Paradise put forward Substantial Evidence
11 that 18 Paradise Assigned Declarant Rights to MJ Management to set the Joint
12 Maintenance Fee Without Needing Prior Approval.

13 Mr. Williams testified to MJ Management's position in business negotiations with 18
14 Paradise. Mr. Williams was involved in MJ Management early on because he was knowledgeable
15 about operating a golf course as a business. Mr. Williams testified that MJ Management began
16 negotiating with 18 Paradise under a time crunch because without a manager the golf course would
17 close almost immediately. He testified that both parties quickly executed the Management and
18 Lease Agreement as a starting point in their relationship. Mr. Williams testified that MJ
19 Management negotiated from the position that it would need full control over day-to-day
20 operations, or it would not enter into an agreement with 18 Paradise. Exhibit B at 20:4-23:7. Mr.
21 Williams also testified that he primarily spoke with Mr. Chen through Raymond Chou as his
22 translator while the parties negotiated. Id. at 6:18-23.

23 Mr. Williams testified that he was aware that prior agreements between the Declarant and
24 previous management companies had structural problems in the relationship. MJ Management

25 ⁵ The Court should note that the Plaintiff's theory of the case recognized no other agreement than the Management
26 and Lease Agreement; a position that the Court disagreed with; recognizing that there were other subsequent
27 agreements between MJ Management and 18 Paradise after the Management and Lease Agreement. All of Plaintiff's
28 Counsel's questions to the deponent were framed within their case theory about agreements between MJ Management
and 18 Paradise.

1 wanted to avoid the pitfalls that previous management companies confronted, and so focused
2 heavily on how much control 18 Paradise was going to assign to MJ Management to manage the
3 property. Mr. Williams testified that 18 Paradise and MJ Management understood that MJ
4 Management would have “full control” over Homestead. Id. at 21:20-22:5; 27:1-7. Critically, MJ
5 Management would have the control necessary to fix the unique issues present at Homestead. Mr.
6 Williams testified that 18 Paradise trusted MJ Management to run the golf course and the
7 community, and so gave them the power to make that happen. Id. at 27:16-28:9. Mr. Williams
8 clarified that he understood that 18 Paradise gave MJ Management the responsibility to run
9 Homestead, and all the decisions that went along with that. Id.

10 The weight of the Defendants’ testimony, their agreed interpretation of the Management
11 and Lease Agreement, and the agreements that resulted from subsequent conversations between
12 those parties are incontrovertible. The parties to these agreements were in the best position to know
13 what they had agreed between themselves. That the Plaintiffs’ tried imposing their own
14 interpretation on MJ Management and 18 Paradise’s agreements⁶, particularly as third parties to
15 those agreements, should be given no weight particularly when the parties to those agreements
16 share the same interpretation of the terms reached between themselves. 18 Paradise assigned MJ
17 Management Declarant rights to run Homestead, and to solve problems around the property as
18 they arose, which necessarily included setting the Joint Maintenance Fee.

19 **C. The Court Appears to have Relied on an Inapplicable Clause in the**
20 **Management and Lease Agreement to Conclude that that Agreement required**
21 **MJ Management to Obtain Prior Approval to Execute the Sixth and Seventh**
22 **Amendments.**

23 1. The Court’s Final Order.

24 ⁶ As noted in Footnote 5, above, Plaintiffs’ theory of the case did not recognize that 18 Paradise and MJ Management
25 had any agreements, except the written Management and Lease Agreement; a theory the Court rejected. Plaintiff’s
26 case theory and evidence restricted itself to the four corners of the parties’ written agreement, and did not address that
27 the parties had other agreements. MJ Management and 18 Paradise, however, put on evidence that they had subsequent
28 agreements (which the Court recognized) and how the parties interpreted them, which the Plaintiffs did not and could
not refute on cross-examination at trial, Defendants’ witnesses consistently testified about their subsequent
agreements.

1 The Court found that 18 Paradise had assigned Declarant rights to MJ Management, but
2 that MJ Management lacked authority to execute the Sixth and Seventh Amendments. The Court
3 only held that MJ Management lacked authority because it did not get prior approval from 18
4 Paradise. It is unclear what the Court relied on in the Management and Lease Agreement to
5 conclude that MJ Management needed 18 Paradise's prior approval to amend the Master
6 Declaration. The only place the term "prior approval" appears when discussing Amending the
7 Master Declaration is in Plaintiffs' Trial Brief. Plaintiffs assert the Management and Lease
8 Agreement required prior approval to change the property, but that requirement does not exist in
9 the Management and Lease Agreement and is not clearly supported in 18 Paradise's highly
10 conflicted 30(b)(6) Deposition Testimony, where Mr. Chou did not appear to clearly understand
11 the questions Plaintiff's Counsel posed to him. Respectfully, if the Court relied on the Management
12 and Lease Agreement, that decision is based on applying a requirement taken from an inapplicable
13 clause.

14 2. Section 1.5 of the Management and Lease Agreement.

15 The only place in the Management and Lease Agreement that contemplates "prior
16 approval" is found in Paragraph 1.5: Repairs. "Manager shall not undertake to alter the property
17 in any material way without the express permission of the Owner. A material change is one which
18 alters the property substantially or changes its use." Management and Lease Agreement at p. 2
19 (Emphasis added). This term appears nowhere else in any written agreements between MJ
20 Management and 18 Paradise.

21 Plaintiffs argued that the Sixth and Seventh Amendments "substantially changed"
22 Homestead. Plaintiffs misread the clause. MJ Management's amendments to the Master
23 Declaration did not substantially change anything about Homestead. Plaintiffs read "substantially"
24 to mean "large." Given the context of the clause, such a reading is inapposite. The correct reading
25 is that "alters the property substantially" means changing the property's nature. MJ Management
26 needed 18 Paradise's permission if it was going to change Homestead's use to anything other than

1 a golf course community. The Sixth and Seventh Amendments neither changed Homestead's use
2 nor altered its nature and use. It is still a golf course community. This reading is consistent with
3 the Court's findings in the Final Order.

4 The Court should thus conclude that MJ Management did not have to have to get 18
5 Paradise's prior approval before executing the Sixth and Seventh Amendments, as they did not
6 alter the property's substance or change its use.

7 **D. The Court should find that the Sixth and Seventh Amendments are valid and**
8 **Enforceable, as MJ Management Exercised Rights that 18 Paradise Assigned**
without Restriction.

9 The Sixth and Seventh Amendments are valid. Respectfully, the Court appears to have
10 misread the terms of the Management and Lease Agreement to require MJ Management to obtain
11 18 Paradise's prior approval to execute the Sixth and Seventh Amendments. The only obligation
12 in the Management and Lease Agreement that requires prior approval is if MJ Management wanted
13 to act to substantially change the property's use. MJ Management did not do anything that
14 substantially changed the property's use. Empowered with their assigned Declarant rights to
15 amend the Master Declaration, including those provisions to set and collect the Joint Maintenance
16 Fee, MJ Management executed the Amendments to the Master Declaration. Even if, *arguendo*, MJ
17 Management had been 18 Paradise's agent, 18 Paradise has clearly ratified MJ Management's
18 actions by not rejecting them, but rather accepting the benefit of the Sixth and Seventh
19 Amendments, and further defending their validity in court for the last four years. A position
20 consistent with both MJ Management and 18 Paradise's interpretation of the agreements between
21 themselves.

22 **E. The Court Should Find that MJ Management has Prevailed on its Declaratory**
23 **Judgment Counterclaim.**

24 The Court should reopen the Final Order, make new findings and conclusions, and enter a
25 new order and judgment. The Court has that authority under CR 59 and a new final order and
26 judgment are both warranted and just. Given that MJ Management had assigned Declarant rights

1 under 8.2.1—or alternatively exercised 18 Paradise’s power as an agent—and 18 Paradise ratified
2 MJ Management’s acts by enjoying the benefits of MJ Management’s acts, and defending those
3 decisions in Court, the Court can and should find that the Sixth and Seventh Amendments to the
4 Homestead Master Declaration are valid and enforceable.

5 If the Sixth and Seventh Amendments are valid, then either the Homeowners or 18 Paradise
6 owes MJ Management under the Master Declaration and/or the Management and Lease Agreement
7 such unpaid maintenance fees up until the date the contractual relationship between MJ
8 Management and 18 Paradise ended.

9 **VI. CONCLUSION**

10 The Court’s decision in its Final Order regarding the Sixth and Seventh Amendment hangs
11 on the application of an inapplicable clause contained in the Management and Lease Agreement,
12 read together with a single cherry-picked line out of a 30(b)(6) Deposition, a line which is
13 inconsistent with other testimony of the deponent contained in that same Deposition, and utterly
14 controverted by the overwhelming weight of the deponent’s live trial testimony and that of other
15 witnesses, namely O’Bryan and Williams – all of which had personal knowledge of the terms and
16 understanding of the agreements between them. In light of the overwhelming evidence the parties
17 presented, who were all involved with negotiating and performing the relevant agreements, the
18 Court should reconsider its findings and conclusions that MJ Management was required to obtain
19 18 Paradise’s approval to record the Sixth and Seventh Amendments, when substantial evidence
20 shows that the opposite is true. As such, the Court should find that the Sixth and Seventh
21 Amendments to the Master Declaration are valid and render judgment in favor of MJ
22 Management’s claims for declaratory relief.

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2 Respectfully submitted, this 20th day of September 20, 2024.

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8 

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1 **CERTIFICATE OF SERVICE**

2 I certify that on the date shown below a copy of the MOTION TO RECONSIDER was served on
3 the following persons in the manner set forth below:

4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Matthew Davis David Andersson 1305 11 th Street, Suite 304 Bellingham, Washington 98225 T: 360-768-1265 matthew@matthewfdavis.com kda@acblc.ca matt@matthewfdavis.com Krystina.Williams@acblc.ca Attorneys for Plaintiff	<input checked="" type="checkbox"/> via eFiling/Email <input type="checkbox"/> via Messenger <input type="checkbox"/> via US Mail <input type="checkbox"/> via Fax
	Benjamin Vandenberghe 701 Fifth Avenue, Suite 5500 Seattle, Washington 98104 T: 206-682-7090 biv@montgomerypurdue.com afrank@montgomerypurdue.com Attorney for Defendant 18 Paradise LLP	<input checked="" type="checkbox"/> via eFiling/Email <input type="checkbox"/> via Messenger <input type="checkbox"/> via US Mail <input type="checkbox"/> via Fax
	Maureen and Roger Dowling romo@olypen.com Matt and Kari Skinner mkkmskinners@comcast.net Intervenors – Pro se	<input checked="" type="checkbox"/> via eFiling/Email <input type="checkbox"/> via Messenger <input type="checkbox"/> via US Mail <input type="checkbox"/> via Fax

DATED this 20th day of September 2024.

/s/ Jody Riegler

Jody Riegler, Paralegal