

MHI PARTNERSHIP'S APPEALS VICTORY ALLOWS DEVELOPERS AND BUILDERS TO SEEK EXCESS FUNDING REIMBURSEMENTS

By Ian P. Faria

In 1997, League City, Texas, created the League City Public Improvement District to fund improvements for the proposed master planned community of Magnolia Creek. Planned improvements included street lights, drainage facilities and sidewalks.

To fund the district, the city levied an assessment on the individual properties within the district, both residential and commercial. The developers initially funded the money needed for the infrastructure improvements and were to be reimbursed from the assessments levied on the individual properties.

Several developers purchased and developed residential lots in Magnolia Creek, some of which also purchased lots to build and sell homes – including MHI Partnership Ltd., one of the largest residential home builders in Texas. The developers paid annual assessments before ultimately selling the properties to homeowners.

Once the improvements were completed, League City hired an accounting firm to audit and reconcile the Public Improvement District. The audit revealed that the actual cost of the improvements

was far less than anticipated and the city had more than \$1.7 million in excess funds after the developers were reimbursed in full.

The city attempted to conduct a claims process to offer refunds. Because there were multiple claimants to each residential lot, however, the city filed an interpleader action with the court, in which the city deposited the excess funds with the court and asked the court to determine the rightful owners.

At trial, several homeowners argued that the current homeowners should reap the benefit of the excess funds. MHI argued that the excess funds should be refunded on a pro-rata basis in proportion to how much each owner actually paid into the fund. The trial court sided with the current homeowners and ordered the excess funds be paid to the property owners on record as of the date of the trial judgment (March 13, 2015), many of whom never paid any assessments.

MHI contested the unfavorable trial court decision in an appeal to the Texas 14th Court of Appeals, which issued an opinion in favor of MHI on April 18, 2017 [MHI P'ship, Ltd. v. City of League City,

525 S.W.3d 370 (Tex. App. – Houston [14th Dist.] 2017)]. This appellate decision set a precedent; it created rights for developers and builders to seek reimbursement of any surplus in infrastructure funding for master planned communities.

After reversing the trial court’s judgment, the 14th Court of Appeals in Houston remanded the case back to the trial court to refund the excess on a pro-rata basis. The appellate court noted that under the trial court’s judgment, property owners who never paid any amount into the district would be paid excess funds. It stated, “Paying money from the excess-assessment fund to a property owner who did not make any special assessment payments is not a ‘refund.’ It is a windfall.”

The appellate court also stated that although the developers in the master planned community may have received full reimbursement for infrastructure costs, they still had interest in the excess assessment funds to the extent they paid levied assessments as owners of property within the district.

On remand, the trial court ultimately followed the claims resolution process and developers like MHI Partnership, Ltd. recovered the funds owed. The remaining funds were then available for distribution to the parties that actually made the initial payments. ■

Ian P. Faria is a partner in Bradley’s Construction and Government Contracts Practice Group and serves as the firm’s office managing partner for the Texas offices. Mr. Faria served as lead trial counsel and appellate counsel, along with Bradley partner Jon Paul Hoelscher, for MHI Partnership, Ltd. He can be reached at ifaria@bradley.com.

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