

# Battling over Bristlecone

## DEVELOPMENT, From 1W

that he has been wronged by his brother and is owed millions of dollars.

Although the real estate development has progressed seemingly unaffected — nearly every lot is sold — the upcoming trial will tell a sometimes bizarre tale of how infighting nearly brought the glitzy project grinding to a halt.

At one point, John Malec asked a judge for permission to erect a wall inside Bristlecone Pines headquarters to separate the two feuding sides.

Court records also include allegations that Mark Malec misappropriated a \$70,000 down payment on a condominium by Milwaukee Brewers great Jim Gantner.

Gantner, who has since sold the condo, said he had no idea there were questions about how the condo deal was handled. But he had heard rumblings about the family squabble.

"I knew that the brothers split up," he said. "That's too bad — brothers."

When the Malecs announced plans for the development in 1994, Bristlecone Pines got off to a smooth start.

In 1995, it became the first golf course community ever included in the Parade of Homes, a showcase organized by the Metropolitan Builders Association of Greater Milwaukee. One year later, the project was featured again, and Mark Malec was named president of the builders association.

The 18-hole golf course, designed by an associate of golfing legend Jack Nicklaus, was hailed as championship-caliber.

Around the course, the Malecs carved out space for 181 single-family homes, some selling for \$1 million or more, and 44 condominiums.

Matt Moroney, executive director of the builders association, said Bristlecone Pines is among Waukesha County's most sought-after, high-end residential developments.

"If you're a golfer, I would say it's one of the premier spots to live," he said.

## Deal struck

In the early stages of the development, one Bristlecone Pines official said John and Mark Malec conceived the idea for the project during a round of golf.

The brothers, both in their 50s, came to the development after charting different courses in business.

John Malec, the older brother, had enjoyed success in technology ventures in Chicago, including one in which he introduced the world to grocery carts equipped with video screens. Chicago newspaper reports estimated John Malec's personal wealth at \$50 million to \$100 million.

Mark Malec stayed in the Milwaukee area and got involved in real estate through his company, Opportunity Homes Inc.

In one court filing, Mark Malec's attorney referred to Bristlecone Pines as "Mark's dream."

The deal establishing Malec Holdings II called for John to invest \$3.8 million, to control 85% of the stock and to become president of the company. Mark Malec invested about \$120,000 for the remaining 15% ownership and the title of vice president.

The game plan: John would provide most of the capital, and Mark would manage the day-to-day affairs of the project.

In a decision that would become the basis of their dispute, the brothers agreed to use Opportunity Homes for marketing Bristle-

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**Wally Thiel,**  
Hartland village manager

cane Pines and for performing interior finishing work on the condos. John Malec's attorneys would later allege that the arrangement created an "inherent conflict of interest" for Mark.

John Malec began questioning his brother's stewardship of the project by 1998. Money that should have been flowing back to Malec Holdings, he alleged in court documents, was instead going to Opportunity Homes.

When John hired auditors to conduct a review of Bristlecone Pines, Mark refused to cooperate, court records allege.

That was when brothers turned adversaries.

At Hartland's Village Hall, officials soon learned there was trouble afoot at Bristlecone Pines.

Village Manager Wally Thiel recalled that one of the brothers — he could not recall which one — approached the village about helping resolve a dispute.

"They wanted us to step in and referee," Thiel said. "And we said, 'Well, geez, go figure it out. You're brothers, for Pete's sake.' "

In January 1999, Mark took the first court action, filing a civil suit that accused John of breach of contract. The suit alleged that John installed his own son, Mike Malec, on the board of directors to remove Mark from any position of responsibility in Bristlecone Pines.

Mark claimed that John changed the locks on office doors, removed Opportunity Homes signs from the development and laid plans to build a door inside the main sales center to separate Mark from the rest of the staff.

Court records show that Mark also accused John of using \$500,000 in company funds to pay part of a divorce settlement.

Mark asked a judge to dissolve the partnership and order a full audit of Malec Holdings. He invoked a legal maneuver freezing ownership of all Bristlecone Pines real estate — essentially halting the development.

John fired back with a countersuit, alleging that his younger brother had improperly diverted proceeds from the development. In addition to Gantner's down payment, the countersuit describes a \$92,250 deposit on one sale and \$70,000 from another as funds that should have gone into Malec Holdings but never did.

John's suit alleges that Mark used those funds and others as "working capital and/or profits" for Opportunity Homes.

The company president also accused Mark of "discounted self-dealing," saying he sold Bristlecone Pines lots to himself at cut rates and used another to settle an unrelated lawsuit.

John asked the judge to dismiss Mark's suit and to unfreeze Malec Holdings real estate so that the development could continue.

He argued that the squabble had cut off \$500,000 in bank financing and meant that Bristlecone Pines "cannot finance its ordinary business endeavors and risks financial collapse."

A judge ultimately lifted the freeze.

When John Malec hired Shorewest Realtors in 1999 to take over marketing for the project, the firm was forced to set up shop temporarily in the golf course clubhouse. Mark Malec was still using the development's main offices, and the judge had temporarily blocked construction of a wall.

A judge later agreed to permit the wall construction, but Mark Malec instead decided to vacate the premises and move to what his attorney calls "a more neutral location."

Court records show that Mark Malec is claiming damages up to \$1.5 million, while John has claimed \$3 million in damages. Both also are asking for unspecified punitive damages.

Today, the development offices for Bristlecone Pines are virtually vacant. All but four of the original lots have been purchased, and builders are busy hammering away at the 40-odd homes yet to be completed.

Jill Federspill, whose family plans to move into a new home there next spring, said she has heard about the feuding developers, but she still finds Bristlecone Pines attractive.

"I feel no concern," she said. "I see quality all around us."