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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF ISLAND

ROBERT WILBUR,)
)
 Plaintiff,)
)
 vs.)
)
 ADMIRAL'S COVE BEACH CLUB, a)
 Washington non-profit)
 Corporation;)
)
 Defendant.)

Cause No: 13-2-00741-4

SUE CORLISS,)
)
 Intervenor,)
)
 vs.)
)
 DUSTIN FREDERICK, ROBERT)
 WILBUR, ADMIRAL'S COVE BEACH)
 CLUB, a Washington non-profit)
 corporation, and its BOARD OF)
 DIRECTORS,)
)
 Defendants.)

Verbatim Report of Proceedings

BE IT REMEMBERED, that on Monday,
 March 6, 2017, the above-named and numbered cause came
 on regularly for hearing before the HONORABLE ALAN R.
 HANCOCK, sitting as judge in the above-entitled court,
 at the Island County Courthouse, in the town of

1 Coupeville, state of Washington.

2 The plaintiff appeared through his attorney,
3 Christon C. Skinner;

4 The defendant Admiral's Cove Beach Club
5 appeared through its attorney, Christopher J. Nye;

6 The intervenor appeared through her
7 attorney, Jay Carlson.

8 WHEREUPON, the following proceedings were
9 had, to-wit:

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1 THE COURT: Okay. Next, we have the case of
2 *Wilbur v. Admiral's Cove Beach Club*. This comes before
3 the Court today pursuant to the plaintiff's motion for
4 leave to amend the complaint. I received and read the
5 papers and am prepared to hear argument; five minutes
6 per side, please. Mr. Skinner.

7 MR. SKINNER: Thank you, Your Honor. I
8 represent the plaintiff, Robert Wilbur. The Court, I'm
9 certain, recalls the history on this case. The matter
10 was resolved at a summary judgment hearing. The Court
11 entered an order determining a number of different
12 issues that had been presented about the obligation that
13 the Board of Directors had to preserve and maintain the
14 pool. And also the Court concluded as a matter of law
15 that the governing documents did not permit the pool to
16 be removed.

17 The Court of Appeals, in its infinite
18 wisdom, had a different view of that particular legal
19 issue and basically found that the governing documents
20 did permit the Board of Directors to make a decision to
21 remove the pool if they elected to do that.

22 Time marched on since the Court filed its
23 decision in the summary judgment matter. After
24 Ms. Corliss filed her appeal, approximately 16, 18
25 months has gone by. In March of 2016, or thereabouts,

1 the association had its annual meeting and it had an
2 opportunity to decide how it wanted to handle the
3 swimming pool, and they voted in 2016 to assess
4 themselves a thousand dollars per buildable lot and to
5 apply that money towards the renovation of the pool.
6 The Board has collected in excess of \$370,000 in
7 furtherance of that vote. It has not been expended yet
8 because they're waiting for this case to be resolved.

9 And so the questions that the Court now is
10 being asked to resolve as we move forward in this
11 case -- which is essentially back to a point where this
12 litigation is just now getting underway, we just happen
13 to have a little bit more clarification than we might
14 normally see on one or two legal issues. But after the
15 mandate was issued, the case is now set to be heard in
16 terms of preparation for discovery and taking of
17 depositions, and none of that has really gotten
18 underway. The intervenor submitted some interrogatories
19 shortly after becoming -- or responding to the summary
20 judgment hearing, rather, and is asking that those be
21 supplemented, but other than that, no other discovery
22 has occurred. So no party can come here today and say
23 that an amendment to the complaint is going to create
24 waste of time or create an undue burden.

25 THE COURT: Let's get down to the issue that

1 I understand to be presented here by the intervenor.
2 The intervenor is contending that the Court should not
3 permit the plaintiff to bring up the issue at this point
4 of the alleged failure of the vote to the membership
5 regarding decommissioning the pool versus repairing the
6 pool because it didn't have the option of doing nothing.

7 Washington does not permit claim splitting,
8 and so that seems to me to be a pretty appealing
9 argument. Do you have any argument about the issue of
10 whether the plaintiff would be permitted to split his
11 claims? There was an appeal to the Court of Appeals on
12 the then-existing complaint and that matter was finally
13 determined. Shouldn't that issue have been raised
14 previously?

15 MR. SKINNER: No, Your Honor. The -- if you
16 think about how the procedure was taken, that plaintiff
17 initially filed a complaint asking for declaratory
18 relief with respect to whether the 2012 vote that was
19 taken and certain instructions given to committees and
20 to the Board to proceed in a certain way, whether the
21 Board at the time in 2013 ignored that direction from
22 the members and constructed a ballot that wasn't
23 consistent with the 2012 information that they were
24 asked to gather. And the Court of Appeals addressed
25 that particular issue at that particular time. They did

1 not talk about whether a ballot that does not allow a
2 party to vote no is per se invalid.

3 THE COURT: I understand that, but there was
4 a challenge to the ballot. So wouldn't it have been
5 necessary for the plaintiff to bring all arguments that
6 he had with regard to the validity of the ballot at that
7 time?

8 MR. SKINNER: No. It wasn't -- it wasn't a
9 challenge directly to the form of the ballot. It was a
10 challenge to the fact that the ballot did not conform
11 with the prior decisions that had been made by the
12 membership.

13 The ballot was provided as part of the
14 evidence to show the Court how it was presented and why
15 it was inconsistent with the decision that was made in
16 2012, but at that particular time no one addressed the
17 question of whether the Bylaws were being properly
18 followed.

19 The Bylaws require a vote, a decision about
20 any assessment. So the ballot is a collateral factor.
21 The question is, can the assessment be imposed when
22 there is no option to say no? And that's a completely
23 different issue than saying that the 2013 ballot didn't
24 properly reflect the 2012 direction.

25 So you have Bylaws that say you have to

1 approve an assessment. The Board did not get approval
2 of that assessment because they did not have any no
3 voters to count. Those people essentially -- if you
4 wanted to vote no, you essentially abstained. So this
5 is a challenge to the way that they handled this vote
6 based on the Bylaws themselves and not necessarily the
7 ballot question that was raised previously.

8 THE COURT: One other question, and this is
9 just an informal comment and I'm not making any legal
10 ruling in any way, shape, or form, but the plaintiff has
11 sought to amend the complaint to bring these matters to
12 the Court. Wouldn't -- would he be required in some way
13 to seek, I guess, an administrative remedy by asking the
14 Board of Directors of the beach club to simply rescind
15 the prior vote? Wouldn't that be his remedy before he
16 could come to court?

17 MR. SKINNER: I don't know of any procedure
18 in the Bylaws that allows the Board on its own to
19 rescind the majority vote of the membership.

20 THE COURT: Why not?

21 MR. SKINNER: It's not identified in the
22 Bylaws, and it doesn't seem that that would be
23 consistent with the way that this organization is
24 governed. And that vote was taken basically as a
25 special assessment. If you look at the Bylaws, the

1 Bylaws are very clear that special assessments cannot be
2 approved without a majority vote of the members. And so
3 for the Board to come in and say we're going to
4 invalidate this, they may be --

5 THE COURT: Well, it wouldn't be a Bylaw
6 amendment. It would be a simple notice vote,
7 presumably. I haven't looked recently at the Bylaws.
8 You'd have to comply with the Bylaws in terms of the
9 procedural mechanism for having the Board consider this,
10 but if a majority of the members of the beach club are
11 now in favor of repairing the pool, as apparently they
12 are -- or the majority of the Board of Directors of the
13 beach club are in favor of repairing the pool and all of
14 that, at least in terms of the actions that have been
15 taken, so couldn't the Board of Directors simply rescind
16 the inconsistent earlier vote consistent with the more
17 recent action to proceed with the assessment, which they
18 did?

19 MR. SKINNER: We are in part, and that's
20 what the intervenor is not disagreeing with. Part of
21 our request for an amendment is for the Court to clarify
22 that discrepancy between the 2016 vote and the 2013
23 vote. And the Board doesn't want to proceed unless it
24 can have some clarification there. So, yes, they could
25 arguably rescind that and that would be our argument

1 when you compare those two. But in addition to that, we
2 don't believe the assessment could possibly stand muster
3 because the membership didn't approve it by a majority
4 vote and that's what they have to do. It's an
5 invalid --

6 THE COURT: I'm just suggesting informally
7 that there might be another way to resolve the issue
8 that is presented at this point by the plaintiff and
9 I'll leave it at that.

10 MR. SKINNER: There is, and these are --
11 these are not exactly in the alternative, so to speak.
12 They are separate issues, but you could certainly get to
13 the same point if the Board is given direction from this
14 court that clearly the 2016 vote represents the most
15 recent decision of the membership and they have the
16 right to change their minds, and if the Court determines
17 that the Board has the authority to invalidate the 2013
18 vote and deal with 2016, I think that's within the
19 purview of what we're asking the Court to do.

20 THE COURT: Okay. Thank you. Mr. Carlson,
21 your response.

22 MR. CARLSON: Thank you, Your Honor. To
23 start where you left off. I'm not aware of any
24 procedure that would allow the Board to somehow rescind
25 or invalidate on its own the majority vote to the

1 community dating back to 2013. I'm a little troubled by
2 the suggestion.

3 You're aware from the papers that we filed
4 that, you know, there's serious questions we're raising
5 about the 2016 vote. Most importantly, the vote is
6 taken under the very clear cloud and was justified both
7 by the Board and in the Board's PR mailings to the
8 community that this court had ordered the repairs.

9 So the -- when the 2016 ballot was sent out,
10 it was sent out with a Frequently Asked Questions form.
11 The very first statement in there is, this court has
12 ordered us to do the repair. And that was the context
13 in which a close vote in 2013 to decommission the pool
14 turned into a close vote in 2016 not to decommission the
15 pool.

16 Pretty clear from the procedural history and
17 how the appeal turned up that the 2013 vote never should
18 have been enjoined. It was wrongfully enjoined. It
19 should have been allowed to implement that vote when it
20 occurred. And so we're -- you know, the reason we
21 haven't opposed addition of the 2016 vote is 'cause it
22 did take place. We do see the validity of this court
23 being involved. I hope this court hasn't prejudged
24 those issues based on the comments today. And, you
25 know, I -- I mean, I feel like I am standing here,

1 having prevailed on the appeal, and I'm in a position to
2 -- you know, to point out that the 2013 vote should have
3 been implemented. This issue should have been resolved
4 a couple years ago.

5 On the amendment to add additional new
6 arguments as to why the 2013 vote should be invalid,
7 Mr. Skinner said, and I quote, "this litigation is just
8 now getting underway." The litigation's been completed.
9 There was a complaint. There were proceedings. The
10 characterization about discovery, I did voluminous
11 discovery directed to both parties. I had to move to
12 compel Mr. Skinner's client to participate in discovery,
13 but they did, as did the Board.

14 We had full-merits proceedings, full-merits
15 briefing, a full and final judgment entered by this
16 court. The appeal that was filed wasn't some
17 interlocutory appeal of side issues or partial issues.
18 There was a full final judgment in this matter entered
19 by this court, which was appealed. The appeal has now
20 been resolved and we prevailed on the appeal.

21 So the litigation is not just now getting
22 underway. The litigation has been complete. It's been
23 three years. There's been a full-merits appeal and now
24 we're back on the mandate with new issues having to do
25 with 2016.

1 But to allow amendment, to go back and say,
2 oh, there was another problem with the 2013 vote; I
3 didn't think of it at the time, didn't raise it in my
4 complaint, didn't bring it before this court before
5 final judgment, we've had an appeal, but now I want a
6 do-over on 2013 and I want to add new complaints about
7 the 2013 vote; that goes right into the *Horsley* case,
8 undue delay, burden, expense of having to litigate,
9 again, the validity of the 2013 vote. That could be two
10 or three more years of litigation.

11 I think the -- you know, the prejudice is
12 self-evident, and there's no explanation offered as to
13 why you didn't bring this up before. You know, it was
14 obviously your intention -- it was Mr. Wilbur's
15 intention to make every challenge he could. Why wasn't
16 it brought up before? It's just too late. That's --

17 THE COURT: Thank you very much.

18 MR. CARLSON: Thank you.

19 THE COURT: Take a comment from Mr. Nye.

20 MR. NYE: Yes, please, Your Honor. First of
21 all, this issue was brought up before. If you look at
22 the original complaint, paragraph 4.8.1, it alleges that
23 the 2013 ballot was invalid because it is contrary to
24 the Articles and Bylaws of the corporation.

25 We didn't have a full-merits hearing. We

1 had a summary judgment based on very specific issues,
2 and one of those issues was whether the club could, even
3 as a threshold matter, contemplate getting rid of the
4 pool. None of the arguments in summary judgment touched
5 upon the issue of whether, if it could, and now we know
6 from the Court of Appeals it can, it went about it in
7 the right way. That was not a point that was ever
8 raised even though that is directly speaking to the
9 validity of the 2013 ballot. And there's no rule that
10 says every argument that could be made must be raised in
11 a motion for summary judgment.

12 THE COURT: Yes, there is. Washington
13 prohibits claim splitting.

14 MR. NYE: Well, Your Honor --

15 THE COURT: If you want to bring a motion
16 for summary judgment for the relief that you are
17 seeking, you have to bring all arguments that bear on
18 that issue under Washington law, do you not?

19 MR. NYE: Your Honor, I direct your
20 attention to *White v. Kent Medical Center*. That's
21 61 Wn. App. 163, where the court -- the issue before the
22 court was whether a party could properly raise an
23 argument for the first time in a reply brief. It was an
24 argument that wasn't raised in the opening brief. The
25 court of course said, no. What the court did say is the

1 party has two options in that case. One, you withdraw
2 the motion, refile it incorporating all of it, or you
3 bring the new issues in a separate proceeding. And
4 that's exactly what the plaintiff's trying to do here.

5 THE COURT: Well, this was a final judgment
6 on the then-existing issues that were brought to the
7 Court's attention and there was no dispute about that.
8 There would have had to have been Cr 54 findings to
9 allow the matter to go to the Court of Appeals on
10 discretionary review if it wasn't a final judgment. So
11 that concerns me.

12 MR. NYE: Well, Your Honor, the Court of
13 Appeals never said that the 2013 ballot was valid as a
14 matter of law. The court said it was not -- Mr. Wilbur
15 failed to prove that it was invalid as a matter of law.
16 And Mr. Wilbur chose very specific issues on which to
17 make that point, namely, whether it complied with the
18 2012 motion and whether the court could even contemplate
19 getting rid of the pool under the governing documents.

20 Now we know they can, and the issue about
21 whether the ballot's been valid has always been there,
22 and I don't think it would be improper for Mr. Wilbur to
23 raise it at this point. But now we know the club can
24 get rid of the pool. We have to ask the question, did
25 they follow the rules in how they went about going about

1 it?

2 THE COURT: Okay. Thank you. One minute
3 for rebuttal, Mr. Skinner.

4 MR. SKINNER: The argument about undue delay
5 and those types of things is not an appropriate argument
6 to make in this case. The delay that was occasioned in
7 this case came from the appeal. We timely prosecuted
8 our request to have these matters disposed on summary
9 judgment. The Court did make a fully dispositive
10 finding by determining that the Board did not have the
11 authority to remove the pool based on the governing
12 documents. That left everything else pretty much as a
13 side issue.

14 As Mr. Nye pointed out, we challenged the
15 general validity of the way that the Board's actions
16 went about obtaining an assessment by not allowing
17 members the option of saying we don't want an assessment
18 of any type. And so that is a completely different
19 basis and it's not a different claim. It's another
20 completely different argument about the Board's failure
21 to follow the Bylaws, not failing to follow the effect
22 of the October 2012 vote. And there's no prejudice,
23 which is touched on in the motion to amend. There's
24 absolutely no prejudice to Ms. Corliss.

25 This case now is going to move forward on

1 different issues. We're going to get a trial date.
2 There may be other summary judgment motions. The
3 question of the 2016 vote and whether it supercedes the
4 2013 vote, according to Mr. Carlson, is definitely going
5 to be a contested issue, but I don't know how the
6 intervenor can get around the fact that when there are
7 issues raised in the initial pleadings that simply were
8 not specifically addressed in the appeal and were
9 specifically not addressed in the summary judgment
10 motion at the time, that that somehow is preclusive. We
11 didn't get a chance to really raise any of those
12 arguments, either at summary judgment or in response to
13 the appeal that was filed.

14 So it doesn't prejudice anyone to have that
15 particular issue brought up and it's not a split of a
16 claim. We're asking for the Court to give us the
17 opportunity to have that presented to you for completely
18 different reasons that are more fundamental: It
19 violates the terms of the Bylaws.

20 So I think it is appropriate to give us our
21 day in court and let us proceed. And unless the
22 intervenor can show real prejudice instead of just
23 saying the words, the Court should not accept that as a
24 reason not to let us go forward.

25 THE COURT: Thank you very much. I'm

1 prepared to rule on the plaintiff's motion for leave to
2 amend his complaint. He's provided the proposed amended
3 complaint, and among the relief that he is seeking is
4 that the Court establish as a matter of law that the
5 2013 member decision to approve a special assessment to
6 decommission the Admiral's Cove Beach Club's swimming
7 pool is invalid and unenforceable by virtue of the fact
8 that the ballot submitted to members did not include an
9 option to reject the special assessment altogether, as
10 required by Article XIV, Section 3 of the Admiral's Cove
11 Beach Club Bylaws, and the ballot was confusing and
12 misleading.

13 It is true that under the court rules
14 generally amendments to complaints should be freely
15 given where justice so requires, and it appears that --
16 well, it may be that there is no prejudice in some
17 general sense to the intervenor or others if the Court
18 were to allow amendment of the complaint. But that's
19 not the issue. The issue is whether the plaintiff
20 should be permitted to split his claim.

21 In this case, there was the prior litigation
22 that resulted in a final judgment of this court that
23 went up to the Court of Appeals. Among the issues
24 raised in the previous litigation that resulted in the
25 final judgment was the issue of the 2013 ballot. The

1 ballot had two options, one to decommission the pool, or
2 to repair the pool. And that ballot was challenged, at
3 least in the sense that there was a claim by the
4 plaintiff that the ballot was inconsistent with the
5 membership motion that had been passed previously, and
6 the Court accepted that argument. The Court of Appeals
7 reversed this court on that issue. But there is no
8 doubt that that 2013 ballot was challenged on that
9 basis.

10 So that being the case, the plaintiff is
11 seeking to raise a new claim at this point to challenge
12 the 2013 ballot. This claim was not made previously.
13 So the issue in this case -- or on this motion is
14 whether the plaintiff should be entitled to make this
15 additional claim for relief to challenge the 2013
16 ballot.

17 CR 18(a) permits joinder of as many claims
18 as a party has against an opposing party. On its face
19 it would appear that the rule is permissive such that a
20 party may make certain claims against another party in
21 one lawsuit and then make additional claims against that
22 party in another lawsuit. However, claim splitting is
23 prohibited under Washington law.

24 As the court indicated in the case of *Landry*
25 *v. Luscher*, L-U-S-C-H-E-R, 95 Wn. App. 779, a 1999 case,

1 quote, "When a single occurrence gives rise to multiple
2 claims against a defendant, the plaintiff will want to
3 assert all such claims in a single lawsuit. Washington
4 does not allow the plaintiff to bring multiple lawsuits
5 as the result of a single occurrence, a practice
6 commonly known as claim splitting."

7 Professor Tegland makes reference to this
8 and other cases on these matters in Volume 3A of
9 Washington Practice: Rules Practice, that's the 2006
10 edition.

11 In the *Landry* case, the court went on to say
12 that "a claimant may not split a single cause of action
13 or claim. Such a practice would lead to duplicitous
14 suits and force a defendant to incur the cost of effort
15 of defending multiple suits."

16 It is true that the cases in which the
17 matter of claim splitting and the res judicata doctrine
18 have been applied involve separate cases rather than a
19 situation involved in the present case. But the same
20 policy reasons apply in the present case as they would
21 have had the claim that is now being asserted by the
22 plaintiff in the present case been brought in a separate
23 lawsuit to assert this additional claim.

24 So I rule that the portion of the amended
25 complaint that would challenge the 2013 ballot on the

1 grounds that it didn't include the no-action alternative
2 cannot be permitted. This should have been raised in
3 the previous matters that were heard by the Court that
4 resulted in a final judgment by this court, and the
5 Court of Appeals has issued its decision. Of course,
6 that's binding on this court and the Court will follow
7 that, naturally.

8 In response to some of the other comments,
9 of course I have not prejudged in any manner this matter
10 of the 2013 vote and whether that could be rescinded or
11 not. I think it's my obligation to explore ways in
12 which matters should be resolved outside of court.
13 There are doctrines in that regard.

14 From the colloquy here, it sounds like both
15 parties may agree that it is not possible to rescind the
16 2013 vote on decommissioning or repairing. And so if
17 that's true, then this court will have to resolve the
18 complaint as it's now been amended, which is the matter
19 of the alleged inconsistency between the 2013 and 2016
20 votes. So I just wanted to raise that as a possible
21 method of resolving the case that perhaps had not been
22 considered or may have been considered.

23 Anyway, in any event, I have not in any way
24 prejudged any issues that will be brought before this
25 court. So I'll entertain the appropriate order.

1 MR. CARLSON: I have a proposed order.

2 MR. SKINNER: Could I have just a little
3 further clarification on that, Your Honor? As Mr. Nye
4 pointed out, there is language in the original complaint
5 that addresses this particular question and that has --
6 that's not what the Court is addressing today. It's
7 strictly whether we can amend the complaint in the form
8 that we proposed.

9 THE COURT: Perhaps it could be argued that
10 there is language that could have raised this issue
11 previously or perhaps impliedly raised this issue in the
12 original complaint, but again, the claim splitting
13 doctrine prohibits splitting claims that ultimately
14 result in a final judgment, which this did. And so I
15 don't accept that argument.

16 MR. CARLSON: I've handed a proposed order
17 to Mr. Nye.

18 Your Honor, could I ask for a brief moment
19 on another -- a procedural issue?

20 MR. SKINNER: Your Honor, I'm not willing to
21 have just an ad hoc procedural issue come up. We're
22 here strictly on --

23 MR. CARLSON: I just want to ask the Court
24 for some guidance.

25 THE COURT: You can ask an informal

1 question. I'm not sure I can answer it, particularly if
2 there's objection to me answering the question. So go
3 ahead.

4 MR. CARLSON: So it's pretty clear to me
5 that based on the Court of Appeals' ruling we're
6 entitled to an order of summary judgment on our cross
7 motion that had been denied as moot when this court
8 reviewed the case prior to appeal.

9 And my question is, you know, does the Court
10 care to give guidance how to present that to you? Can I
11 file a proposed order? Do you want me to refile and
12 renote the summary judgment motion in total? How do you
13 want to proceed in that regard?

14 MR. SKINNER: And I object --

15 THE COURT: Response?

16 MR. SKINNER: -- to any attempt by counsel
17 to try to get the guidance from the Court about how to
18 handle his case. It's not appropriate.

19 THE COURT: Any comment, Mr. Nye?

20 MR. NYE: I would agree. That's not the
21 issue we're here on, is intervenor's motion for summary
22 judgment.

23 MR. CARLSON: I just thought I could save
24 the parties some time.

25 THE COURT: I understand. I don't take

1 issue with you raising the question, but I really better
2 leave it to the motions practice. As I recall, the
3 Court of Appeals remanded for further proceedings, so
4 you may proceed in the way that you deem appropriate,
5 Mr. Carlson.

6 MR. CARLSON: Thank you, Your Honor.

7 THE COURT: Thank you very much.

8 MR. CARLSON: I'll leave the order.

9 MR. SKINNER: Thank you, Your Honor.

10 THE COURT: Okay.

11 MR. NYE: Your Honor, we have some
12 disagreement over the language of the proposed order.
13 Would you prefer that we just convene on our own time
14 and submit an order later?

15 MR. CARLSON: I can hand it up.

16 THE COURT: Yes.

17 MR. CARLSON: It's very brief.

18 THE COURT: All right. Hand it up. I'll
19 take a look at it. What is the objection to form,
20 Mr. Skinner?

21 MR. SKINNER: My objection is the editorial
22 complaint in paragraph one, "claims regarding the 2013
23 vote have already been litigated, including through a
24 full-merits appeal." That's -- that is, at a minimum,
25 in dispute and not part of what the Court ruled on

1 today. The Court simply denied the request to amend the
2 complaint to add the additional cause of action that we
3 asserted. Whether or not the Court of Appeals' decision
4 fully addresses and is dispositive of anything relating
5 to the 2013 vote, is not properly before us today, and
6 that should not be included in this order.

7 MR. CARLSON: Your Honor, I certainly have
8 no objection --

9 THE COURT: Just a minute.

10 Mr. Nye.

11 MR. NYE: Well, I disagree with the
12 full-merits language. What we had was a granting of a
13 motion for summary judgment on very particular issues.
14 This was not the same thing as a trial. It just so
15 happened that the issues that were raised were
16 sufficient to dispose of the case. This is not full
17 merits.

18 THE COURT: All right. Final comment,
19 Mr. Carlson?

20 MR. CARLSON: I mean, I have no objection to
21 you making whatever change you feel is necessary to
22 bring the order into conformity with your oral ruling.
23 I just -- if it's not already there, it's pretty close.
24 So I -- you know, I think we all understand you've --
25 what your ruling is and -- thank you.

1 THE COURT: I've read the proposed order
2 denying in part and granting in part plaintiff Wilbur's
3 motion to amend the complaint. This is the order
4 presented by Mr. Carlson. This is the appropriate order
5 to be entered and this is the basis for the Court's
6 ruling so I'm going to enter that.

7 MR. CARLSON: Thank you, Your Honor.

8 THE COURT: That is all.

9 MR. NYE: Thank you, Your Honor.

10 (Whereupon, the proceedings in this matter
11 were concluded for the day.)

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C E R T I F I C A T E

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5 I, JEANNE M. WELLS, do hereby certify that
6 the foregoing verbatim report of proceedings were taken
7 by me and completed on Monday, March 6, 2017, and
8 thereafter, transcribed by me by means of computer-aided
9 transcription;

10 That I am not a relative, employee,
11 attorney, or counsel of any such party to this action or
12 relative or employee of any such attorney or counsel,
13 and I am not financially interested in the said action
14 or the outcome thereof;

15 That I am herewith filing the original with
16 the Court of Appeals and emailing one copy to Jay
17 Carlson.

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19 _____
20 Jeanne M. Wells, RPR
CCR #: 2298

21 March 15, 2017
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