

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF ISLAND

3

4 ROBERT WILBUR & DUSTIN) Cause No. 13-2-00741-4
5 FREDERICK,)

6 Plaintiffs,)

7 v.)

8 ADMIRAL'S COVE BEACH CLUB,)

9 Defendant.)

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11 VERBATIM REPORT OF PROCEEDINGS

12 (Motion for Summary Judgment)

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14 BE IT REMEMBERED that on Friday, September 14, 2018
15 at 9:30 o'clock, A.M., the above-named and numbered cause came
16 on for a Motion for Summary Judgment Hearing before the
17 HONORABLE ALAN R. HANCOCK, sitting as judge in the
18 above-entitled Court, at the Island County Courthouse, in the
19 Town of Coupeville, State of Washington.

20 Christon C. Skinner, Attorney at Law, appeared on
21 behalf of the Plaintiffs.

22 Christopher Nye, Attorney at Law, appeared on behalf
23 of the Defendant.

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1 Whereupon, the following proceedings were had:

2 THE CLERK: All rise.

3 Island County Superior Court is now in session. The
4 Honorable Alan R. Hancock presiding.

5 THE COURT: Good morning, everyone. Please be
6 seated.

7 MR. NYE: Good morning, Your Honor.

8 THE COURT: This is Cause No. 13-2-00741-4,
9 Wilbur versus Admiral's Cove Beach Club coming on pursuant
10 to Plaintiff Robert Wilbur's Motion for Summary Judgment.

11 I have a few comments at the outset here.

12 It appears from my review of the record that there
13 are no remaining Defendants in the case who oppose
14 Mr. Wilbur's motion here or the relief that he is seeking.

15 I see that Ms. Corliss has taken a nonsuit of her
16 claim or response to Mr. Wilbur's Complaint.

17 All of the other Defendants has been dismissed from
18 the case.

19 Admiral's Cove Beach Club itself has joined in this
20 motion. So it is not opposed for the motion.

21 Therefore, it appears to the Court that this case
22 does not present a justiciable controversy.

23 As the Court indicated in the case of the *City of*
24 *Yakima v. Aubrey*, A-U-B-R-E-Y, 85 Wn.App. 199 and
25 specifically at Page 204 -- That's a 1997 case -- the

1 Court quotes from the case of *Washington Beauty College,*
2 *Inc. v. Huse*, H-U-S-E, 195 Washington 160, a 1938 case, as
3 follows:

4 "The action must be adversary in character between
5 real parties and upon real issues, that is, between a
6 plaintiff and defendant having opposing interests. And
7 the interests must be direct and substantial and involve
8 an actual - as distinguished from a possible or
9 potential - dispute to meet the requirements of
10 justiciability."

11 Article 3 of U.S. Constitution requires a case or
12 controversy for the exercise of judicial power by federal
13 courts. And that is also the rule in Washington.

14 So it appears to me that there is no justiciable
15 controversy and there's nothing for the Court to rule
16 upon.

17 Your comments, counsel.

18 MR. SKINNER: Good morning, Your Honor.

19 Your Honor, at the time the motion was presented, the
20 intervenor was still part of the action. And throughout
21 the course of the proceedings, since the intervenor has
22 been involved, they represented to the Court that the
23 entirety of the association did not support Mr. Wilbur's
24 position and that they felt as though they were acting in
25 a representative capacity, as did the Board at the time

1 that it appeared. In fact, the Board initially opposed
2 all of the relief that the Plaintiff was seeking.

3 It's true that the Board, as the governing body
4 today, does not oppose the specific relief; but they still
5 represent the entirety of the membership and the
6 association.

7 So we believe that even though Ms. Corliss
8 strategically dismissed her action directly and took the
9 nonsuit shortly before this hearing began, that the
10 controversy still does genuinely exist because there are
11 still members of the association who have an interest
12 that's contrary to the Plaintiffs'.

13 And so the-- While - while the Board may have taken
14 a position that does not appear adversarial to us
15 specifically, they do represent a number of people as the
16 governing body that - that have those feelings and beliefs
17 and there is a genuine controversy still in existence.

18 And it's simply-- It's-- It is an issue that fits
19 within the statutory definition because we're talking
20 about writings, in particular, a resolution and a vote
21 that was taken.

22 And we're asking the Court to determine which of
23 those specific resolutions and result of the vote is the
24 proper and correct one.

25 And given the representations made by the intervenor

1 previously and the positions taken by the Board initially
2 when this case was filed, we - we do think the Court could
3 find that a justiciable controversy exists in terms of
4 what has gone on before us.

5 And I understand the Court's concern in light of the
6 dismissal of the intervenor's claim, but would like the
7 Court to reconsider.

8 THE COURT: Thank you.

9 Mr. Nye.

10 MR. NYE: I would only further add that to my
11 knowledge there's not been a Reply filed to this motion.

12 This motion was opposed by intervenor prior to her
13 dismissal of her Complaint.

14 As things stand now, nothing's taken place to alter
15 that. We have an equal playing field.

16 And I think the point Mr. Skinner raises is a good
17 one. There is a controversy here.

18 And this is a matter of public importance for the
19 members of ACBC.

20 Whether that's a matter of public importance for the
21 general public that would take this outside the
22 requirements of justiciable controversy, I - I leave that
23 for you to decide.

24 This is a dispute that's been going on for five
25 years. There's been a lot of vitriol in this community.

1 There's been a lot of hurt feelings. And this club needs
2 to heal and move on.

3 The pool has been renovated.

4 So Your Honor has mentioned in the past: "Can this
5 club not do administratively what's being sought here in
6 the Court?"

7 And perhaps they have.

8 I might offer an alternative, if the Court is going
9 to stick by the judicial - justiciable controversy
10 requirement, and that is an alternative grounds for relief
11 presented in the Club's motion last year. And that is a
12 finding that the issue of the validity of the 2013 ballot
13 has been rendered moot by subsequent action of the club.

14 THE COURT: Thank you.

15 I'm not persuaded.

16 This is not a justiciable controversy. The Beach
17 Club itself is an abstract entity. It's a nonprofit
18 corporation.

19 The fact that there may be some persons who are
20 members of the Beach Club and who are in opposition to the
21 position of the Beach Club does not change the fact that
22 the Beach Club itself does not oppose this motion.

23 So this is not a justiciable controversy. I decline
24 to rule on the motion.

25 Anything further?

1 MR. SKINNER: Would you like me to present an
2 Order or is the Court simply not ruling at all, denying or
3 granting?

4 THE COURT: That's correct. I'm not denying or
5 granting. I'm not going to make a decision one way or the
6 other because there is no case pending before the Court
7 between parties who oppose the relief that each is
8 seeking.

9 MR. SKINNER: All right. I'll-- We may note an
10 - an Order to that effect so that it's clear in the record
11 what - what the final--

12 I think the Court did take jurisdiction initially
13 based on the statute because at the time the intervenor
14 intervened, there was a justiciable controversy.

15 So I think I'd like to have it clear in the record
16 that at that time there was jurisdiction. But the Court
17 made a finding today that the dismissal removed that
18 authority to make a declaratory statement in regard to
19 this dispute. Then at least we have that for purposes of
20 any future issues that might come up in this case.

21 THE COURT: Well, that's correct. Up until the
22 time that Ms. Corliss took her voluntary nonsuit, there
23 was a justiciable controversy. Now there isn't.

24 So there's nothing for the Court to rule upon at this
25 time.

1 MR. SKINNER: All right. We'll present an Order
2 to that effect.

3 THE COURT: All right.

4 MR. NYE: Your Honor, will this result in a
5 dismissal of the action?

6 THE COURT: It appears that that would be the
7 appropriate procedure.

8 MR. NYE: Can I ask that we hold off 30 days
9 before entering such an order in the event there may be
10 some other interest within the club that wish to step
11 forward?

12 THE COURT: I don't think there would be
13 anything to preclude that.

14 MR. SKINNER: That's fine. We'll stipulate to
15 that.

16 THE COURT: All right.

17 MR. NYE: Thank you, Your Honor.

18 THE COURT: Thank you. That is all.

19 THE CLERK: All rise.

20 (Hearing concluded at 9:40 o'clock, A.M.)
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C E R T I F I C A T E

I, Karen P. Shipley, do hereby certify that the foregoing Verbatim Report of Proceedings was taken by me to the best of my ability and completed on Friday, September 14, 2018, and thereafter transcribed by me by means of computer-aided transcription;

That I am not a relative, employee, attorney or counsel of any such party to this action or relative or employee of any such attorney or counsel, and I am not financially interested in the said action or the outcome thereof.

That I am herewith affixing my seal this 19th day of September, 2018.

Karen P. Shipley

Karen P. Shipley, CSR No. 2051