

FILED-COPY

MAY 18 2015

DEBRA VANCELLI  
ISLAND COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF ISLAND

ROBERT WILBUR and DUSTIN  
FREDERICK,

Plaintiffs,

vs.

ADMIRAL'S COVE BEACH CLUB, a  
Washington non-profit corporation; and  
JEAN SALLS, MARIA CHAMBERLAIN,  
KAREN SHAAK, ROBERT PEETZ, ELSA  
PALMER, ED DELAHANTY AND DAN  
JONES, individuals,

Defendants.

NO. 13-2-00741-4

ORDER GRANTING IN PART  
AND DENYING IN PART  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT

SUE CORLISS

Intervenor,

vs.

DUSTIN FREDERICK, ROBERT  
WILBUR, ADMIRAL'S COVE BEACH  
CLUB, a Washington non-profit  
corporation, and its BOARD OF  
DIRECTORS,

Defendants.

THIS MATTER having come on for hearing on March 27, 2015, before the undersigned judge pursuant to Plaintiff, Robert Wilbur's, motion for an order granting summary judgment in his favor and against the defendant, Admiral's Cove Beach Club;

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1 the Plaintiff appearing through his attorney, Christon C. Skinner; Defendant, Admiral's  
2 Cove Beach Club, appearing through its attorney Christopher J. Nye; and Intevenor, Sue  
3 Corliss appearing through her attorney, Jay Carlson; and the court having heard argument  
4 of counsel and having reviewed the following documents:

- 5 1. Plaintiff Robert Wilbur's Amended Motion for Summary Judgment;
- 6 2. Plaintiff Robert Wilbur's Amended Declaration in Support of Motion for  
7 Summary Judgment;
- 8 3. Defendant Admiral's Cove Beach Club's Response to Plaintiff's Motion for  
9 Summary Judgment;
- 10 4. Declaration of Ed Delahanty in support of Defendant's Response to Plaintiff's  
11 Motion for Summary Judgment and the exhibits thereto;
- 12 5. Intevenor Sue Corliss' Brief in Opposition to Plaintiff's Motion for Summary  
13 Judgment;
- 14 6. Intervenor Sue Corliss' Declaration of Susan Corliss in Opposition to Plaintiff's  
15 Motion for Summary Judgment and the exhibits thereto;
- 16 7. Declaration of Charles Bauer in Opposition to Plaintiff's Motion for Summary  
17 Judgment;
- 18 8. Declaration of Maria Chamberlin in Opposition to Plaintiff's Motion for  
19 Summary Judgment;
- 20 9. Declaration of John H. Deegan in Opposition to Plaintiff's Motion for Summary  
21 Judgment;
- 22 10. Declaration of Cathie Harrison in Opposition to Plaintiff's Motion for Summary  
23 Judgment;
- 24 11. Declaration of Delwin R. Johnson in Opposition to Plaintiff's Motion for  
25 Summary Judgment and exhibits thereto;
- 26 12. Declaration of Michael J. King in Opposition to Plaintiff's Motion for Summary  
27 Judgment;
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- 1 13. Declaration of Barbara H. Nichols in Opposition to Plaintiff's Motion for  
2 Summary Judgment;  
3 14. Declaration of Robert Peets in Opposition to Plaintiff's Motion for Summary  
4 Judgment;  
5 15. Declaration of Bradley Protin in Opposition to Plaintiff's Motion for Summary  
6 Judgment;  
7 16. Declaration of Jean R. Salls in Opposition to Plaintiff's Motion for Summary  
8 Judgment;  
9 17. Declaration of Karen Shaak in Opposition to Plaintiff's Motion for Summary  
10 Judgment;  
11 18. Plaintiff Robert Wilbur's Declaration in Reply to Corliss' Response to  
12 Plaintiff's Motion for Summary Judgment and the exhibits thereto; and  
13 19. The complete Court file, including the Complaints, Answers and exhibits  
14 thereto; and  
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17 The court having determined that no genuine issues of material fact exist in  
18 connection with the facts and issues identified within the plaintiff's motion for summary  
19 judgment; and further that summary judgment in plaintiff's favor for the relief requested  
20 in that motion should be granted in part and denied in part as otherwise noted below;  
21 and the court further finding and concluding that the Plaintiff is entitled to judgment as  
22 a matter of law, now, therefore, it is hereby:  
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25 **ORDERED** that the Plaintiff Robert Wilbur's motion for summary judgment is  
26 **GRANTED**, to the extent that the Plaintiff is seeking Declaratory Judgment. The court  
27 orders and declares:  
28

- 29 1. The Admiral's Cove Beach Club ("ACBC") swimming pool and related facilities  
30 are among the athletic and recreational facilities contemplated under Article  
31 V of the Articles of Incorporation of ACBC which provides that the purpose of  
32

1 ACBC is "[t]o construct, install, maintain and/or own and operate athletic and  
2 recreational facilities of all types and kinds for the benefits of the members."

- 3 2. ACBC and its Board of Directors must adhere to the requirements and  
4 directives set forth in the motion that was made and approved at the  
5 Defendant's annual membership meeting on October 27, 2012, unless said  
6 motion is properly repealed or amended to remove the duties of the Board of  
7 Directors and ACBC, which duties are presently embodied in this motion.  
8 That particular motion, as approved, does not contain language that could be  
9 construed to permit the demolition or decommissioning of the swimming pool  
10 or related facilities as an option for the membership's future consideration.  
11  
12 3. The prior Board's action to present a ballot to the membership with the option  
13 to decommission the pool was contrary to the October 27, 2012, motion. It  
14 was therefore invalid and of no force and effect.  
15  
16 4. The prior Board's action to authorize an assessment to demolish or  
17 decommission the ACBC swimming pool and related facilities is invalid and of  
18 no force and effect.  
19  
20 5. The October 25, 2014, motion presented to the membership and  
21 characterized as the "Alternative Visions" motion does not supersede, repeal  
22 or replace the content or directive set forth in the October 27, 2012 motion,  
23 which remains in effect.  
24  
25 6. In consideration of the applicable provisions of the Articles of Incorporation  
26 and Bylaws, the context in which they were promulgated, the circumstances  
27 surrounding their promulgation, and the other rules for their interpretation, the  
28 general power to dispose of property as set forth in the Articles of  
29 Incorporation and Bylaws governing ACBC, does not provide authority to the  
30 Board to dispose of the ACBC swimming pool and related facilities.  
31  
32 7. Any vote on a motion or other action item submitted to the membership at a  
regular or special meeting of the membership that would result in the

1 demolition or decommissioning of the ACBC swimming pool, would be invalid  
2 and of no effect unless the governing documents of ACBC were first properly  
3 amended or changed to allow such action.

4 8. Under the governing documents as presently constituted, the members of the  
5 Board of Directors of ACBC have a legal duty and fiduciary obligation:

6 a. to maintain, repair and operate the swimming pool and its related  
7 facilities in a reasonable manner and as may be required by local, state  
8 and federal law and the governing documents themselves; and

9 b. to take affirmative action, consistent with the governing documents of  
10 Admiral's Cove Beach Club, to budget for and raise funds through  
11 properly authorized dues and assessments to carry out these duties.

12 9. The Board's duties in this regard include sufficient budgeting and funding  
13 decisions that will allow for the future and continued operation and  
14 maintenance of the swimming pool and related facilities.

15 10. When making decisions about funding and budgeting, including dues and  
16 special assessments, the Board of Directors and the Members of Admiral's  
17 Cove Beach Club must adhere to the provisions of ACBC's Articles of  
18 Incorporation, Bylaws, and all local, state and federal law.

19 It is further **ORDERED** that Plaintiff Robert Wilbur's motion for summary judgment  
20 is **DENIED** to the extent it seeks any injunctive relief. It is further

21 **ORDERED** that Plaintiff's request for the Court to retain continuing jurisdiction  
22 over the parties and subject matter of this lawsuit is **DENIED**. Provided, however, that  
23 this Order in no way limits any party from seeking further and additional relief based  
24 upon facts and issues not presented in this case or fact that have arisen since the date  
25 of this court's Order. It is further

26 **ORDERED** that, based upon the Court's decision on Plaintiff's Motion for  
27 Summary judgment, Intervenor, Sue Corliss', pending Cross Motion for Summary  
28 judgment is moot and need not be decided. It is further

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**ORDERED** that the temporary injunction previously entered by the Court in this matter is hereby dissolved. It is further

**ORDERED** that this order shall fully dispose of and resolve all of the issues presented by all parties to this action. Accordingly, this Order shall be treated as a "Decision Determining Action" pursuant to RAP 2.2(a)(3).

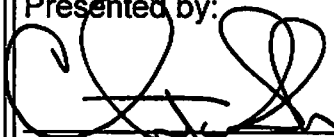
Dated this 18<sup>th</sup> of May, 2015.

/s/ ALAN R. HANCOCK

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Hon. Alan R. Hancock, Judge

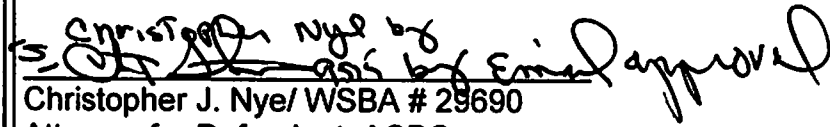
Presented by:



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Christon C. Skinner / WSBA #9515  
Attorneys for Plaintiffs

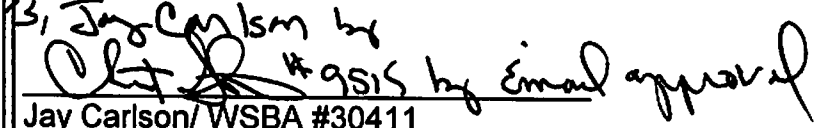
Approved for entry; copy received;  
Notice of presentation waived:

*s. Christopher J. Nye by email approved*  


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Christopher J. Nye / WSBA # 29690  
Attorney for Defendant, ACBC

Approved for entry; copy received;  
Notice of presentation waived:

*s. Jay Carlson by email approved*  


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Jay Carlson / WSBA #30411  
Attorney for Intervenor, Sue Corliss