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SUPERIOR COURT OF WASHINGTON  
FOR ISLAND COUNTY

ROGER L. CLOSE,  
Plaintiff,

No. 10-2-00479-8

vs.

**DEFENDANT’S ANSWER TO  
PLAINTIFF’S COMPLAINT FOR  
DECLARATORY RELIEF AND TO  
QUIET TITLE**

ADMIRAL'S COVE BEACH CLUB, INC., a  
Washington non-profit corporation, now  
known as ADMIRALS COVE  
HOMEOWNERS ASSOCIATION, INC.,  
Defendants.

COMES NOW the defendants ADMIRAL'S COVE BEACH CLUB, INC., a/k/a  
ADMIRALS COVE HOMEOWNERS ASSOCIATION, INC., and answers plaintiff’s  
complaint as follows:

**ANSWER**

1. Roger L. Close (“Roger Close”) is a single man who resides in Island County,  
Washington, and who owns Lots 22, 23 and 53, Plat of Admirals Cove, Division No. 7, as per  
plat recorded in Volume 9 of Plats, Page 73, records of Island County, Washington, situate in  
Island County, Washington (“Close Property”).

**The defendants admit the allegations in paragraph 1.**

1           2.       Admiral’s Cove Beach Club, Inc. is a Washington non-profit corporation which  
2 is now known as Admirals Cove Homeowners Association, Inc. (“Club”). The Club operates  
3 and maintains a swimming pool and other facilities upon property known as Tract A.  
4

5           **The Defendants admit the allegations in paragraph 2, however the Club also had**  
6           **interest in property on other Tracts, specifically Tract B, which contains a private**  
7           **road.**

8           3.       The covenants, conditions and restrictions recorded by the developer for the  
9 Admiral’s Cove development, including those recorded for its Division No. 7, did not provide  
10 for the establishment of a homeowners association, and did not provide that the Club would be  
11 a homeowners association for the Admiral’s Cove development, or have any jurisdiction over it  
12 or its lot owners.

13           **Deny.**

14           4.       Nor did such covenants, conditions and restrictions require lot owners in the  
15 Admiral’s Cove development to be members of a homeowners association, or subject them to  
16 their lots to any requirement to pay dues or assessments to a homeowners association, or to the  
17 Club.

18           **Deny.**

19           5.       In 2008, the president of the Club, signing, as, among other things,  
20 “Incorporator,” filed Articles of Amendments to the Articles of Incorporation of the Club with  
21 the Washington Secretary of State.  
22

23           **The Defendants admit the allegations in paragraph 5, except that the president did**  
24           **not sign as an Incorporator, but rather as president of the Club. These were not**  
25           **Articles of Incorporation, but Articles of Amendment.**

1           6.       Such Articles of Amendment indicate that they change the name of the Club  
2 from Admiral's Cove Beach Club, Inc. to Admirals Cove Homeowners Association, Inc.;;  
3 indicate that they substitute new Articles of Incorporation of the Club which are referenced as  
4 an attached document, indicate that they were adopted by the Club's board on October 27,  
5 2007; and indicate that the purpose of the amendment is to bring the Club into compliance with  
6 RCW Chapter 64.38 and RCW Chapter 46.61.419.  
7

8           **The Defendants admit the allegations in paragraph 6.**

9           7.       The Club contends that such Articles of Amendment are effective to, and do,  
10 confer and establish its jurisdiction as a homeowners association over the Close Property and  
11 over Roger Close as a member thereof.  
12

13           **The Defendants admit the allegations in paragraph 7.**

14           8.       The Club contends that it is a homeowners association with jurisdiction over,  
15 and has the right and authority of a homeowners association over, the Close Property and/or  
16 Roger Close under covenants running with the land and/or equitable restrictions, under its  
17 bylaws and/or other documents, and/or under RCW Chapter 64.38.  
18

19           **The Defendants admit the allegations in paragraph 8.**

20           9.       The Club contends, by way of its Bylaws, and/or other documents, and/or  
21 otherwise, in law or in equity, that it has jurisdiction over, and the right and authority to  
22 enforce, or authorize enforcement of, covenants running with the land and/or equitable  
23 restrictions against Roger Close and the Close Property.  
24

25           **The Defendants admit the allegations in paragraph 9.**

1           10.     The Club contends that it has jurisdiction and the right and authority to levy and  
2 assets, and imposes liens for the same upon, the Close Property, and that Roger Close is  
3 obligated to pay the same.

4                   **The Defendants admit the allegations in paragraph 10.**

5           11.     The Club contends that Roger Close is a member of the non-profit corporation,  
6 Club, is thereby subject to its jurisdiction and authority as a member, and that such membership  
7 is appurtenant to the Close Property.  
8

9                   **The Defendants admit the allegations in paragraph 11.**

10          12.     Roger Close disputes these contentions of the Club and a justifiable controversy  
11 concerning the same exists between the parties.  
12

13                   **The Defendants admit the allegations in paragraph 12.**

14          13.     The allegations or paragraphs 1- 12 are re-alleged and incorporated here by  
15 reference.  
16

17                   **Repeat the answers.**

18          14.     The Articles of Amendment mentioned above are not effective to, and do not,  
19 confer and establish jurisdiction of the Club as a homeowners association over the Close  
20 Property, or over Roger Close as a member thereof.  
21

22                   **Deny.**  
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1           15.     The Club is not a homeowners association with jurisdiction over, and does not  
2 have the right and authority of a homeowners association over, the Close Property and/or Roger  
3 Close under covenants running the land and/or equitable restrictions, under its bylaws and/or  
4 other documents, and/or under RCW Chapter 64.38.

5  
6           **Deny.**

7           16.     The Club does not, by way of its Bylaws, and/or other documents, and/or  
8 otherwise, in law or in equity, have jurisdiction over, or the right and authority to enforce, or  
9 authorize enforcement of, covenants running the land and/or equitable restrictions against  
10 Roger Close and the Close Property.

11           **Deny.**

12           17.     The Club does not have jurisdiction or the right and authority to levy or assess,  
13 or to impose liens for the same upon, the Close Property, and Roger Close is not obligated to  
14 pay the same.

15           **Deny.**

16           18.     Roger Close is not a member of the non-profit corporation Club. Roger Close is  
17 not subject to the jurisdiction or authority of the Club, as a member or otherwise. The Close  
18 Property is not subject to the jurisdiction or authority of the Club.

19           **Deny.**

20           19.     Additionally, Roger Close accepted the Club's offer to opt out of any  
21 membership in the club, is not a member of the Club, and there is no Club membership that is  
22 appurtenant to the Close Property.

23           **Deny.**

1           19.1 In January of 2010, the Board of Directors of the Club sent to Roger  
2 Close and other property owners in the Admiral's Cove development a documents entitled  
3 'Important Notice to All Property Owners of Admiral's Cove,' a copy of which is attached as  
4 Exhibit 1, which indicated and acknowledged, among other things, that:

5                           19.1.1 Admirals Cove Homeowners Association is not a homeowners'  
6 association and will be renamed Admiral's Cove Beach Club.

7                           19.1.2 Owners of lots in Admiral's Cove are not obligated to belong to  
8 the Club.

9                           19.1.3 Members who chose to opt-out of membership in the Club  
10 continue to have the right to re-join at some future date, subject to any provisions that may be  
11 adopted by the remaining members of the Club.

12                           19.2 Additionally, this document offered to the property owners that "{t}hose  
13 who choose to opt-out immediately without further information may do so in writing."

14                           19.3 By letter to the Club's Board of Directors dated February 7, 2010, Roger  
15 Close accepted this offer and thereby opted out of any membership in the Club.

16  
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18           **Deny.**

19           20. By statement dated June 10, 2010, the Club has recently billed Roger Close for  
20 dues and contends that he owes the same as a member of the Club. Roger Close disputes these  
21 contentions, and a justifiable controversy exists regarding this dispute.

22           **The Defendants admit the allegations in paragraph 20.**

23           21. Roger Close is not a member of the Club and does not owe such dues.

24  
25           **Deny.**

1 22. The Court should enter declaratory judgments declaring the matters alleged in  
2 paragraphs 14-19 and 21 above.

3 **The Defendants admit that the Court should enter declaratory relief but as**  
4 **requested by the defendant.**

5  
6 23. There are no covenants running with the land, or equitable restrictions, or other  
7 documents, recorded or otherwise, upon, which affect the title to, or which are enforceable by  
8 the Club against, the Close Property, and the Club's contentions to the contrary, and any  
9 documents upon which the Club may rely in this regard, are a cloud upon the title of Roger  
10 Close to the Close Property, and the Court should enter a declaratory judgment so declaring,  
11 and a decree quieting the title of Roger Close against the same.

12  
13 **Deny.**

14 **AFFIRMATIVE DEFENSES**

15 1. Facts. Admiral Cove Incorporated began developing the Admiral's  
16 Cove neighborhood in 1963 and restrictive covenants were first recorded in 1967. The  
17 defendant Admiral's Cove Beach Club, now Homeowners Association, was incorporated in  
18 1969 and purchased the pool, one of its major assets. In 1982 the Club adopted amended  
19 bylaws that were recorded in which affirmed the Club's authority to assess for the upkeep of  
20 Club property, which includes a clubhouse, beach, swimming pool, and a short stretch of  
21 private road between the beach club and hillside Admiral's Cove properties. No member of the  
22 Homeowner's Association has ever before challenged the authority of the defendant to collect  
23 these assessments and it has collected assessments, billed for assessments, recorded liens and  
24 otherwise continuously enforced obligations against the homeowners in Admiral's Cove since  
25

1 its inception in 1969. There are approximately 700 lots in the Admiral's Cove subdivisions.  
2 About 120 property owners are delinquent in their payments.

3 2. Plaintiff's claim is barred by the applicable statute of limitations.

4 3. Defendants' claim is barred by equitable consideration including laches,  
5 unjust enrichment, estoppels and a waiver.

6 4. The Plaintiff is obligated to be a member of the Homeowners  
7 Association because he has accepted the benefits and services thereof and is estopped to deny  
8 the same and that a contract is implied.

9 5. The plaintiff has failed to join other indispensable parties to this action,  
10 the other homeowners whose rights and liabilities will be affected by the results of this  
11 litigation.

12 6. This matter should be ordered as a class action of all lot owners in  
13 Admiral's Cove, because the class is so numerous, 700 lots, that joinder of all members is  
14 impracticable, there are questions of law or fact common to the class, the claims or defenses of  
15 the representative parties are typical of the claims or defenses of the class, and the plaintiff will  
16 fairly and adequately protect the interests of the class. The prosecution of separate actions by  
17 or against individual members of the class would create a risk of inconsistent or varying  
18 adjudications with respect to individual members of the class which would establish  
19 incompatible standards of conduct for the party opposing the class, or adjudications with  
20 respect to individual members of the class which would as a practical matter be dispositive of  
21 the interests of the other members not parties to the adjudications or substantially impair or  
22 impede their ability to protect their interest.  
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**PRAYER FOR RELIEF**

WHEREFORE, defendant ADMIRAL'S COVE HOME OWNER'S ASSOCIATION prays for relief and judgment against the plaintiff as follows:

1. The plaintiff's claims be dismissed with prejudice.

2. This answering defendant be awarded its costs and disbursements incurred herein including reasonable attorneys' fees as provided by RCW 64.38.050.

3. The Court should certify this case as a class action under CR 23 and authorize notice to all property owners within the Admiral's Cove Subdivisions.

4. The Court should find that the defendant is a home owners' association as defined by RCW 64.38; that it has the power to levy assessments to all homeowners within any of the Admiral's Cove subdivisions for the construction, maintenance and upkeep of all common facilities or otherwise as authorized by the defendant; and that it has the power to collect, such assessments by any lawful means.

5. Alternately, the Court should enjoin the plaintiff and any party joining with him as a plaintiff from any trespass on, use of or other benefit from the common facilities or property of Admiral's Cove and enter a judgment denying the plaintiffs and their successors any interest whatsoever in or access to such facilities or property.

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6. The Court should grant such other and further relief as is just and proper.

DATED this 21<sup>st</sup> day of July, 2010.

LEE SMART, P.S., INC.

By: \_\_\_\_\_  
Michelle A. Corsi, WSBA No. 24156  
William L. Cameron, WSBA No. 5108  
Of Attorneys for Defendants

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**DECLARATION OF SERVICE**

The undersigned declared, under penalty of perjury under the laws of the State of Washington, that on the below date, I caused service, to the below named individual(s) via the method indicated.

James H. Jones  
Law Offices of Bell & Ingram  
2918 Colby Avenue, Suite 201  
Everett, WA 98206

Via:  
 U.S. Mail  
 Facsimile  
 Legal Messenger

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated at Seattle, Washington, this \_\_\_\_\_ day of July 2010.

\_\_\_\_\_  
Kimberly A. Daniels