

The Court of Appeals
of the
State of Washington

RICHARD D. JOHNSON,
Court Administrator/Clerk

DIVISION I
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June 6, 2016

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CASE #: 73725-2-1

Susan Corliss, Appellant v. Admiral's Cove Beach Club et al, Respondents

Counsel:

The following notation ruling by Commissioner Mary Neel of the Court was entered on June 3, 2016:

Appellant Susan Corliss has filed a motion for a stay/injunction under RAP 8.3 to prevent respondent Admiral Cove Beach Club from taking steps to implement a recent, second vote regarding disposition of an existing community swimming pool.

Admiral Cove Beach Club has an old swimming pool that has become dilapidated. In 2013 the 600 community members were given a choice between repairing/refurbishing the pool at a cost of \$650,000, or decommissioning/removing the pool at a cost of \$200,000. A majority of voters chose to decommission the pool (166/153). Club member Robert Wilbur then filed a lawsuit against the Club and sought a permanent injunction to invalidate the vote. The trial court ruled that the vote was invalid as outside the governing articles of incorporation and bylaws, which the court ruled do not permit the Board to dispose of the pool and related facilities, and that the Board has a duty to maintain, operate and repair the pool. The trial court denied the request to maintain jurisdiction, noting that the order does not limit any party from seeking further and additional relief based on facts/issues not presented or that have arisen since the order. In short, the decision does nothing other than invalidate the vote to decommission the pool.

Intervenor/club member Susan Corliss filed a notice of appeal challenging the trial court order. At the time, no one sought a stay of the trial court order. Briefing on the appeal is complete.

In the meantime, in March 2016 a reconstituted Board conducted a second vote regarding the disposition of the pool, to wit: an assessment of \$500/\$1000 per lot to refurbish the pool; and an additional assessment for a heat pump option. Members could vote yes or no on both propositions. A majority of voters favored the first assessment (144/125); the second, additional assessment failed. The Board is now in the process of collecting the assessments and making plans to begin work on the pool.

Appellant Corliss now seeks a stay to prevent the Board from collecting the assessment, which she says will cause a financial hardship for some members, and from beginning work on refurbishing the pool, which may moot the appeal. The Club and Wilbur oppose a stay.

If appellant Corliss prevails on appeal and this court reverses the trial court order invalidating the vote to decommission the pool, the initial vote to decommission the pool would be upheld. It appears that any issues regarding the effect of the second vote to refurbish the pool would be resolved on remand. To the extent that Corliss suggests that the second vote was invalid due to disenfranchisement of some members and/or other improper voting procedures, the issues are not part of the current appeal, and at this point apparently no lawsuit or other action has been brought to invalidate the second vote.

The Board has taken steps to minimize the potential financial hardship for members by allowing six months to pay the assessment without finance charges and has agreed to make additional arrangements on an individual basis. At this point Corliss has not demonstrated a legal basis to stop the Board from beginning to collect the assessment. But if the Board begins to spend some of the money it has collected and begin work on refurbishing the pool, Corliss could be deprived at least in part of the benefit of a successful appeal. A stay is warranted to preserve the benefit of a successful appeal. The Board has provided evidence that delay until September 2016 may result in a 5% cost increase, and that delay for a second year may cost an additional 5-7%, plus additional consulting fees of \$5,000 - \$7,000. The briefing is complete, and the appeal is ready to be set before a panel. A supersedeas cash or bond of \$30,000 (5% of the total project cost of \$600,000) is appropriate.

Accordingly, upon appellant posting a supersedeas cash or bond of \$30,000 in the superior court registry, a partial stay is granted to permit the Board to collect the assessment, which shall be placed in a separate fund not to be spent until the appeal in this court is completed.

Therefore, it is

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ORDERED that upon appellant posting a supersedeas cash or bond of \$30,000 in the superior court registry, a partial stay is granted to permit the Board to begin collecting the assessment, which shall be placed in a separate fund not to be spent until the appeal in this court is complete.

Sincerely,

A handwritten signature in black ink, appearing to read 'R.D. Johnson', with a long horizontal line extending to the right.

Richard D. Johnson
Court Administrator/Clerk

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