

The Honorable Alan R. Hancock
Date of Motion: _____, _____ p/a.m.
Nature of Motion: _____
With/Without Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF ISLAND

ROBERT WILBUR and DUSTIN
FREDERICK,

Plaintiffs,

v.

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

DECLARATION OF JEAN SALLS IN
SUPPORT OF DEFENDANTS SALLS,
CHAMBERLAIN, SHAAK, PEETZ,
AND JONES' (1) MOTION FOR
SUMMARY JUDGMENT BASED ON
MOOTNESS AND (2) MOTION TO
DROP MOVING DEFENDANTS
PURSUANT TO CR 21 AND/OR
DISMISS PURSUANT TO CR 56

I, Jean Salls, hereby certify under penalty of perjury, that the following is true and correct
and within my personal knowledge:

1. I am over the age of 18, have personal knowledge of all facts contained in this
declaration and am competent to testify as a witness to those facts.

2. I was the President of the Admiral's Cove Beach Club ("ACBC") Board of
Directors at all times relevant to the plaintiffs' Complaint.

SALLS DECLARATION RE DEFENDANTS SALLS,
CHAMBERLAIN, SHAAK, PEETZ, AND JONES'
(1) MOTION FOR SUMMARY JUDGMENT AND
(2) MOTION TO DROP MOVING DEFENDANTS AND/OR
DISMISS PURSUANT TO CR 56

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Patterson
Mines
One Convention Place
Suite 1400
701 Pike Street
Seattle, Washington 98101-3927
(206) 292-9988

1 3. When Moving Defendants were on the Board, they were faced with the requirement
2 pursuant to WAC 246-260-141 that “if a pool facility is not in operation for more than twelve
3 months, the owner shall provide a safety cover over the pool meeting ASTM standard F1346-91 or
4 the owner shall back fill the pool.”

5 4. The pool was last used in September 2012, before it was closed for the season.

6 5. During the summer of 2012 when the pool was open sporadically, the Moving
7 Defendants’ Board began investigating the refurbishment of the pool. However, despite the
8 Board’s diligent work to resolve the pool issue, a quorum of members at the October 2012 Annual
9 Meeting passed a motion setting forth an alternative process to evaluate the pool’s future.

10 6. Attached to this Declaration as **Exhibit A** are meeting minutes regarding the motion
11 made at the October 2012 Annual Meeting.

12 7. The meeting minutes attached as **Exh. A** to this Declaration contain the official
13 record of the motion that the membership passed.

14 8. During the next several months the Board complied with this motion, but doing so
15 pushed any resolution of the pool issue closer to the one-year deadline set forth in WAC 246-260-
16 141.

17 9. In an effort to have the pool issue resolved before the one-year, September 2013
18 deadline, in May 2013 the Board took its findings in compliance with the October 2012 motion and
19 put the pool issue to a vote.

20 10. Before including the removal option on the ballot, the Board sought a legal opinion
21 as to whether ACBC’s governing documents required the continued existence of the pool.

22 11. Attached to this Declaration as **Exhibit B** is the legal opinion as to whether ACBC’s
23 governing documents required the continued existence of the pool; the opinion states that the
24 Bylaws and articles of Incorporation do not require that the pool be maintained.

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1 12. Based on the Board’s understanding of its obligations under RCW 24.03.127, which
2 permits the Board to rely on opinions of counsel, the Board included the removal option on the
3 ballot.

4 13. Had the Board waited any longer to put the issue to a vote, the pool likely would
5 have been in violation of the WAC because the one-year deadline was rapidly approaching.

6 14. Covering the pool was not an option at that time. While the WAC does permit the
7 Club to cover the pool, because of the pool’s odd shape and need for a cover with extra strength,
8 the cost of a suitable cover exceeded \$11,000. As the Board is only able to spend \$4,000 without
9 membership approval and because at the time it was unknown whether the membership was willing
10 or able to pay for the pool to ever be operable again, spending in excess of \$11,000 to cover a pool
11 that may never operate again was not a realistic option. Moreover, covering the pool would have
12 required the Club to continue annual maintenance, insurance, management, and utility costs on the
13 pool with an annual approximate cost of \$10,000.

14 15. Attached to this Declaration as **Exhibit C** is an estimate for installation of the pool
15 cover.

16 16. Attached to this Declaration as **Exhibit D** is the ballot to refurbish the pool.

17 17. The total cost to refurbish the pool was reached after receiving an extensive study
18 and estimate regarding what was required to bring the pool into code compliance, how much such a
19 refurbishment would cost, and the size of the appropriate reserve/maintenance fund.

20 18. Attached to this Declaration as **Exhibit E** a set of frequently asked questions and
21 corresponding answers included with each ballot.

22 19. Moving Defendants all voted to refurbish the pool and believed that the majority of
23 the community would also vote to refurbish the pool. However, a majority of ACBC members
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1 voted to remove the pool. The results of the voting were announced at a June 29, 2013
2 membership meeting.

3 20. Attached to this Declaration as **Exhibit F** are the June 29, 2013 meeting minutes
4 reflecting that a majority of the members voted to remove the pool.

5 21. The special assessments to fund removal of the pool were mailed to the membership
6 on or about August 13, 2013.

7 22. Following this vote and subsequent special assessment to remove the pool, plaintiffs
8 filed this action seeking to enjoin ACBC and the individual defendants from taking any further
9 action to remove the pool and from influencing the ACBC elections in a manner contrary to the
10 Bylaws.

11 23. Attached to this Declaration as **Exhibit G** are the Club's Bylaws.

12 24. Moving Defendants are no longer Board Members.

13 25. On January 11, 2014, ACBC held its Annual Meeting at which time the results of
14 the election for the new Board of Directors were announced. As a result of the election, Maria
15 Chamberlain, Karen Shaak, Robert Peetz, and Dan Jones were no longer on the Board.

16 26. Attached to this Declaration as **Exhibit H** is a copy of my January 30, 2014
17 resignation to the Board.

18 27. The Board is now comprised of the following individuals: plaintiff Dustin
19 Frederick; defendants Suzy Palmer and Ed Delahanty; and Kurt Blankenship, Fred Salmon, and
20 Chris Hendrickson.

21 28. Attached to this Declaration as **Exhibit I** is a copy of a letter sent to all Club
22 members regarding the positions taken by Ed Delahanty, Suzy Palmer, Fred Salmon, Christine
23 Hendrickson, Dustin Frederick and Kurt Blankenship expressing their interest in moving forward
24 with the motion to restore and maintain the pool.

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1 **CERTIFICATE OF SERVICE**

2 I, Valerie D. Marsh, declare as follows:

3 1) I am a citizen of the United States and a resident of the State of Washington. I am
4 over the age of 18 years and not a party to the within entitled cause. I am employed by the law
5 firm of Betts, Patterson & Mines, P.S., whose address is One Convention Place, Suite 1400,
6 701 Pike Street, Seattle, Washington 98101-3927.

7 2) By the end of the business day on February 22, 2014, I caused to be served upon
8 counsel of record at the addresses and in the manner described below, the following documents:

- 9 • **Declaration Of Jean Salls In Support Of Defendants Salls, Chamberlain, Shaak, Peetz, And Jones' (1) Motion For Summary Judgment Based On Mootness And (2) Motion To Drop Moving Defendants Pursuant To CR 21 And/Or Dismiss Pursuant To CR 56; and**
- 10
- 11
- 12 • **Certificate of Service.**

13 *Counsel for Plaintiffs:*

14 Christon C. Skinner
15 Law Offices of Christon C. Skinner, P.S.
16 791 SE Barrington Drive
Oak Harbor, WA 98277-3278

- U.S. Mail
- Hand Delivery
- Telefax
- UPS
- E-mail

17 *Counsel for Defendants Palmer & Delahanty:*

18 Christopher J. Nye
19 Reed McClure
Two Union Square
601 Union Street, Suite 4901
20 Seattle, WA 98101-3920

- U.S. Mail
- Hand Delivery
- Telefax
- UPS
- E-mail

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

23
24
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1 DATED this 22nd day of February, 2014.
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Valerie D. Marsh
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