

No. 73725-2-I

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

SUSAN CORLISS,

Appellant,

vs.

ADMIRAL'S COVE BEACH CLUB et al,

Respondents.

AFFIDAVIT OF APPELLANT SUE CORLISS SUPPORTING
MOTION FOR INJUNCTION PURSUANT TO RAP 8.3

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1. I first note that the Opening and Response briefs have already been filed in this case. They are available, if desired, for a more thorough discussion of the merits of the present appeal.
2. This case concerns a dilapidated, nearly-half-century-old, uncovered outdoor swimming pool located within a property development on Whidbey Island. The 600 member development is known as the Admiral's Cove Beach Club (the "Club"). I am a property owner in this development.
3. Our broken down, outdoor pool is only open on a small number of days each year. It is used regularly by only a small minority of Club Members. Moreover, expert analysis has disclosed that the pool has no remaining useful life left, and that it will cost at least \$650,000 to effectuate needed repairs.
4. Accordingly, in May, 2013, after a well informed and carefully vetted process, the Members of the Club voted to close and decommission this pool. In this ballot, put forward by the Cove Board at the time, the membership was given a choice between a significant \$650,000 assessment to repair and refurbish the pool, or a \$200,000 assessment to decommission and remove it. The community voted and democratically chose to remove the pool, not repair it. The vote was 166/153. This prior vote is the subject of the present appeal.
5. Under the plain terms of the Club's Articles of Incorporation, Club Members and the Board had every right to eliminate or "dispose of" the pool. However, one Club Member, plaintiff Robert Wilbur, filed a lawsuit against the Club. He sought a permanent injunction to invalidate the vote of the Club membership to get rid of the

pool. See generally, Plaintiff's Motions for Summary Judgment, CP 743-757; CP 302-317.

6. In its final ruling below, the trial court invalidated the prior vote of the membership to get rid of the pool. The court ruled that the documents governing the Club somehow created a contractual right, enforceable by Mr. Wilbur, in the perpetual maintenance and operation of the swimming pool. CP 17-18. It is this ruling that I am directly challenging on appeal.

7. As demonstrated in my Opening Brief, neither the Restrictive Covenants nor the Articles of Incorporation of the Club say anything whatsoever about a swimming pool. And while the Club Bylaws have certain provisions touching on the pool, these provisions are operational only, and are limited to the "Committees" portion of the bylaws. These provisions merely concern operational procedures such as committee work to manage the pool. They nowhere guarantee or require or compel the perpetual presence of a swimming pool. Nor can they be reasonably construed to do so.

8. The Articles of Incorporation of the Club do make clear, however, that the Club has the right "[t]o sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of the property and assets." See Corliss Declaration, CP 496-577, Exhibit F, Article V, ¶ 5, CP 546. The power of the Club to "dispose of" of "all or any part of" its assets could not be stated more clearly and unambiguously. This unambiguous provision alone, placed Mr. Wilbur on clear notice that the Club could, at its discretion, "dispose of" the pool.

9. In 2013, the Club voted democratically to get rid of its pool, and it had every right to do so under its own formation documents. It also voted to reject a special assessment to repair the pool. This is the issue presented to this Court on appeal.

10. Despite the pendency of this case, the current Cove Board recently went forward with a second vote regarding the disposition of the swimming pool. The new Board for a second time asked the community to approve a large, \$650,000 special assessment to effectuate repairs. This is functionally identical to the prior request which the community previously rejected and which is the subject of this appeal.

11. Prior to holding this new vote, however, the Cove Board disenfranchised many members and prevented them from voting. Only select members of the Cove community were therefore permitted to vote. This disenfranchisement apparently applied to anyone who was not, as of the date of the vote, current on their dues payment. Some people were disenfranchised who were only slightly behind on such payments.

12. The vote results were announced on March 12, 2016. By a 144/125 margin, the limited number of community members who were allowed to vote narrowly approved the new request for a repair assessment. So, this new vote is directly contrary to the prior vote of this Community, which is the subject of this appeal.

13. Now, the Cove Board has sent out bills to all 600 members of the Cove community, including those who were not allowed to vote. A special assessment of \$1000 per each lot is being invoiced and imposed. This will present a severe

financial hardship for many members of the Cove community, including those who were prohibited from voting. Deegan Declaration at 5-6; Novak Declaration at 3-4.

14. After raising the funds from this new assessment, the new Cove Board intends to hire contractors and complete very substantial repair work on the pool. This will all take place before this Court has an opportunity to rule on the present appeal. These activities should be enjoined until this appeal is decided. Otherwise, the appeal will be rendered moot.

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

Done on this 8th day of April, 2016, at Coupeville, WA

Respectfully submitted,

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