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

ROBOERT 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.

SUE CORLISS,

Intervenor,

v.

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

Defendants.

Case No.: 13-2-00741-4

INTERVENOR SUSAN CORLISS'
CROSS-MOTION FOR SUMMARY
JUDGMENT AND MOTION TO
DISSOLVE TEPMORARY
RESTRAINING ORDER

I. SUMMARY

As the Court is aware, the issues in this case were briefed previously on
plaintiff's prior Motion for Summary Judgment. Plaintiff's struck that Motion after

1 Intervenor Susan Corliss was permitted to Intervene in this case. Plaintiff has now
2 filed a slightly amended Motion for Summary Judgment. Here, the Intervenor Ms.
3 Corliss brings her own, Cross-Motion for Summary Judgment. This brief is
4 amended from her Opposition Brief previously filed. It is based on the existing
5 Declarations.

6 A single property owner in the 600-Member Admiral's Cove development is
7 asking this Court to force the Admiral's Cove Beach Club to continue to operate --
8 and to repair -- its dilapidated, uncovered, outdoor swimming pool. This pool is only
9 open on a very small number of days each year, and is only used regularly by a
10 small number of the Cove's 600 Members. Inspection and architectural planning
11 disclose that these repairs to the pool and related facilities will cost at least
12 \$650,000.

13 Mr. Wilbur has asked the Court for a Mandatory Injunction ordering the
14 Club to impose large financial assessments against all 600 Members. The Members
15 have not approved these assessments, and many of them simply cannot afford them.
16 The requested Order would usurp and override the Bylaws of the Club in numerous
17 respects. Most importantly, the Bylaws establish a democratic process to govern
18 Club policy, particularly regarding budgeting, financing, and assessments against
19 Members. If the requested Order is granted, all 600 Members will be
20 disenfranchised from one of the most important principals of Club operations --
21 democratic Member decision-making related to dues and assessments.

22 The requested Order would also violate RCW 7.24.110, which provides that in
23 a Declaratory Judgment action: “[N]o declaration shall prejudice the rights of
24 persons not parties to the proceeding.” Here, approximately 600 property
25 owners on Whidbey Island, who are not parties to this proceeding, would be directly
26 financially prejudiced by the relief requested in this case.

27 12 Club Members submit declarations to this Court stating their opposition
28 to Mr. Wilbur's claims, including his request for forced pool repairs and forced

1 assessments against the Membership. In totality, these Declarations provide the
2 Court with a more complete picture of the dynamics related to the pool issue than
3 has been presented before. These are the Declarations of Intervenor Corliss, and
4 King, Shaak, Peetz, Chamberlain, Johnson, Salls, Harrison, Portin, Bauer, Nichols,
5 and Deegan.

6 Summary Judgment is appropriate because the Club has already decided the
7 pool issue for itself, pursuant to its own bylaws. In a well informed and carefully
8 vetted process, in May 2013 Club Members voted to close their pool. Under the
9 plain terms of the Articles of Incorporation, the Club had every right to “dispose of”
10 or sell or eliminate this pool. Although the Court, on Motion, was convinced to
11 grant a TRO restraining that vote, the Intervenor respectfully submits that the
12 Court was not provided with complete information regarding facts on the ground.
13 Accordingly, pursuant to RCW 7.40.180 the Intervenor requests that the Court
14 dissolve the TRO. This will return management of Club budgeting, financing, and
15 decision-making to where it belongs: the democratically-controlled and Member-
16 managed Admiral’s Cove Beach Club.

17 The main legal defect with Mr. Wilbur’s case is that he offers no legal support
18 for his claimed property right in the perpetual operation and repair of a swimming
19 pool. There simply is no doctrine of property law that requires the perpetual
20 operation of specific facilities, such as a pool, within a community-organized
21 development. If individual lot-owners had such rights, this would overturn the
22 entire legal edifice supporting the existence of community developments. For
23 example, the law governing Condominiums, and Homeowner’s Associations, would
24 be largely wiped off the books. See RCW 64.34.005 *et seq.*

25 In support of the remarkable assertion that he possesses an individual
26 property right to force the Cove development to repair and operate the pool, Mr.
27 Wilbur cites to no supporting case law or statutes whatsoever. No principal of
28 property law is discussed or referred to. None is cited, because none is believed to

1 exist. Moreover -- despite Mr. Wilbur's repeated suggestions to the contrary --
2 neither the Restrictive Covenants nor the Articles of Incorporation say anything
3 whatsoever about a swimming pool. Because they nowhere mention a pool, under
4 property law concepts these documents cannot establish an enforceable property
5 right in a pool.

6 The Articles of Incorporation do make clear, however, that the Club has the
7 right: "To sell, convey, mortgage, pledge, lease, exchange, transfer **and otherwise**
8 **dispose of all or any part of the property and assets.**" See Articles, Corliss
9 Decl., Ex. F, Article V, ¶ 5 (emphasis added). This provision alone, unambiguous,
10 and standard in such Articles in modern times, placed Mr. Wilbur on notice that the
11 Club could, at its discretion, "dispose of" the pool. This is what the Club tried to do,
12 and what it has every right to do under its own formation documents.

13 Mr. Wilbur is now requesting a permanent "Mandatory Injunction," one that
14 will force the Club and its Members to engage in many affirmative acts and which
15 will cost many Members a lot of time **and money**. Yet because of their nature --
16 forcing people who are not parties to engage in affirmative acts and pay money --
17 Mandatory Injunctions are highly disfavored. Stanley v. University of S. Cal., 13
18 F.3d 1313, 1320 (9th Cir. 1994). Such Injunctions should be "denied unless the facts
19 and law clearly favor the moving party." Stanley, 13 F.3d at 1320; see also Park
20 Village Apartment Tenants Ass'n v. Mortimer Howard Trust, 636 F.3d 1150, 1160
21 (9th Cir. 2011). This is in keeping with Washington's statutory rule that a final
22 Declaratory Judgment, such as the one sought here, cannot bind people who are not
23 parties to the case. RCW 7.24.110.

24 Here, the legal basis for Mr. Wilbur's claimed property right is nonexistent,
25 and approximately 600 individual Club Members will be directly impacted by the
26 requested Order. A Mandatory Injunction is not appropriate, and the Court should
27 now dissolve the TRO previously entered in this case.

28 II. FACTS SUPPORTING THE OPPOSITION

1 As noted above, 12 Members of the Admiral's Cove Beach Club have
2 submitted Declarations opposing Mr. Wilbur's claims. These Declarations cover a
3 range of issues, but taken together they provide the Court with a more complete
4 picture of the events giving rise to the present dispute than has been presented
5 before. As one example, the Declaration of Cathie Harrison provides a complete
6 timeline and description of the detailed work conducted by Cove Members to study
7 the pool issues and make recommendations to the Members preceding the vote to
8 close the pool in May, 2013.

9 The following facts are derived from the Corliss Declaration, which serves as
10 an overview of sorts for the factual issues at play in this case. Ms. Corliss is a
11 property owner in the Admiral's Cove development. By virtue of her property
12 ownership, she is a Member in good standing of the Admiral's Cove Beach Club (the
13 "Club,") which is named as the defendant in this lawsuit. She has voting rights as a
14 Member of the Club, and may be subject to annual dues and special assessments
15 imposed by the Club pursuant to its Bylaws and Articles of Incorporation. The Club
16 exists to serve the interest of its Members, including Ms. Corliss. Indeed, as an
17 individual property owner and Member within the Cove, she has the exact same
18 standing as does Mr. Wilbur in this case.

19 **A. THE CLUB AND ITS OPERATIONS**

20 The Club includes approximately 600 active Members, all of whom own lots
21 within the Cove development. Pursuant to the Bylaws and Articles of Incorporation
22 of the Club, Members all have voting rights to elect Club officers and to set Club
23 policy, particularly when it comes to dues and assessments against Members.

24 The Club Bylaws govern Club activities. Under the Bylaws, the Club cannot
25 impose special assessments against lot owners/Members without a majority vote of
26 those Members, either at a live Member's meeting or by mail ballot. Corliss Decl.,
27 Ex. A, Bylaws, Article 14, Sec. 3. Also, the Club may not significantly increase the
28 annual dues imposed on Members without a majority vote of the Members. Id.,

1 Bylaws, Article 8, Sec. 7. In this way, the approximately 600 property owners in the
2 Cove have the right, through a democratic process, to set fiscal policy for
3 themselves. The Club is managed by the Members, through the Bylaws. A true
4 and correct copy of the Club Bylaws is attached as Exhibit A to the Corliss
5 Declaration.

6 The Cove property consists of hundreds of private, Member-owned lots, as
7 well as large property lots owned by the non-profit Admiral's Cove Beach Club. A lot
8 map showing the lot configuration in the Cove development is attached as Exhibit B
9 to the Corliss Declaration. Members have rights for access and use of the Club-
10 owned property. The most significant piece of Club owned property is the large
11 waterfront area owned by the club with beach access at Admiralty Bay and another
12 area with waterfront access to the Lake. This beach area is available for all
13 Members to use and enjoy. Corliss Decl., ¶ 5.

14 **B. MR WILBUR'S LAWSUIT TO FORCE THE CLUB TO KEEP THE**
15 **POOL OPEN FOR HIS BENEFIT**

16 This suit, however, primarily concerns an uncovered outdoor swimming pool
17 which is located on one parcel of property owned by the Club. Many Club members,
18 such as Ms. Corliss and others who have submitted Declarations, have no interest
19 in using this old, dilapidated, outdoor pool facility. While the plaintiff has
20 repeatedly asserted that this pool is the "primary asset and recreational facility" of
21 the Club, this is far from the truth. In fact, the primary asset of the Club is the
22 large waterfront area which provides waterfront and beach access to all Club
23 members who live in the Cove. This asset is far more valuable, far more popular
24 among members, and far more regularly used, than is the dilapidated pool. In fact,
25 the pool is almost never open, remains locked and inaccessible for the vast majority
26 of the year, and is used by only a small percentage of Cove residents. Corliss Decl.,
27 ¶ 6.

28 In this case, a single member of the Club, Mr. Wilbur, is suing to force all

1 Club Members to spend hundreds of thousands of dollars to keep this pool open.
2 This is against the wishes of the majority of Club Members, who voted pursuant to
3 the Bylaws to close the pool. If successful, Mr. Wilbur's suit will result in large
4 assessments being imposed upon all 600 Members, including Ms. Corliss and the
5 other Declarants, against their will and without Member approval for such
6 assessments, which is required by the Bylaws. Corliss Decl., ¶ 7.

7
8 **C. THE DELAPIDATED, OUTDATED POOL**

9 The uncovered, outdoor pool was built in the 1960s. It has never been
10 refurbished. It is in a dramatic state of disrepair. As a result, it can only be used
11 during a very small portion of the year. According to the approved Board of
12 Director's meeting minutes from September 20, 2014, this year the pool was open on
13 only approximately 20 days. On days when the pool is not open -- which is the vast
14 majority of the entire year -- the pool area is fenced, locked, and inaccessible to
15 Members. The pool facility is almost always in this locked and inaccessible
16 condition. Therefore, the vast majority of the time, the "pool" actually consists of a
17 fenced, locked, unusable and worthless area within the Cove. Corliss Decl., ¶ 8.

18 Many Members, including Ms. Corliss and other of the Declarants, never use
19 the pool. In a June, 2012 Long Range Planning Survey, 49.3% of Members disclosed
20 that they never use the pool, with another 37.7% reporting that they only used it
21 "occasionally" in the summer, meaning less than once weekly. Relevant portions of
22 this survey are attached as Exhibit C to the Corliss declaration. Only a very small
23 minority of Members reported using the pool on a regular basis. Corliss Decl., ¶ 9.

24 A recent inspection and architectural review of the pool facility disclosed
25 widespread problems with the pool, and recommended that it be very significantly
26 rebuilt, with all major systems replaced. After inspection, the remaining useful life
27 of the existing swimming pool was identified as "0 years." The review concluded:
28 "Most of the pool components are outdated/aged with no major renovations of the

1 pool since construction in the law 1960's." Major required repairs include
2 "swallowing" the deep end of the pool "due to hydrostatic issues" and installing new
3 drains, re-plastering the pool which will also include removing and replacing all the
4 tile and coping, removing and replacing the entire concrete deck, and replacing all
5 underground piping. The pool heater, a major component, was found to be
6 dysfunctional and requires replacement. The pool pump, another major component,
7 was found to be not functioning and requires replacement. A series of repairs major
8 and minor were recommended, both to the pool and to its related facilities such as
9 the dilapidated shower facility. The estimated cost of these repairs to pool facilities
10 was \$650,000. True and accurate copies of portion of these evaluations are attached
11 as Exhibit D to the Corliss Declaration. Corliss Decl., ¶ 10.

12 **D. THE MEMBER VOTE, PURSUANT TO THE BYLAWS, TO CLOSE**
13 **THE POOL**

14 In support of his injunction requests, Mr. Wilbur has repeatedly argued that
15 the vote of the Members in May 2013 to decommission the pool was somehow in
16 violation of an October 2012 Motion which created a Pool Committee to study pool
17 issues. He suggests that the Member vote in May 2013 somehow violated or
18 usurped the scope of work of the Pool Committee.¹

19 In his new Declaration Mr. Wilbur makes numerous, unsupported claims
20 about the work of this Committee, attempting (but failing) to somehow discredit its
21 recommendations. Yet Mr. Wilbur has refused to produce in discovery any
22 documents reflecting his participation on this committee, his correspondence with
23 Board members, or any other document regarding the pool issue. In fact, Mr.

24 ¹ In his new Declaration Mr. Wilbur makes numerous, unsupported claims about
25 the work of this Committee, attempting (but failing) to somehow discredit its
26 recommendations. Yet Mr. Wilbur has refused to produce in discovery any
27 documents reflecting his work on this committee or his correspondence with Board
28 members or others about the pool issue. Mr. Wilbur has refused to produce even a
single document in support of his claims or allegations.

1 Wilbur has refused to produce even a single document in support of his claims in
2 this case. This will be the subject of a separate Motion to Compel.

3 In fact, Mr. Wilbur was a member of the Pool Committee, but he decided to
4 stop attending Committee meetings and he took himself out of the process early on,
5 for unknown reasons. See Harrison Decl. at 2-3. Despite Mr. Wilbur's inattention,
6 however, the Pool Committee engaged in a rigorous process of review and analysis
7 over many months to develop options and plans for the pool. Harrison Decl. at 3-11.
8 This was detailed-oriented work. It involved the assistance of architects and pool
9 consultants to inspect and examine the pool and related facilities and report and
10 make specific recommendations. Multiple Members worked on this Committee and
11 met and communicated regularly. Further details of this process are contained in
12 the Harrison Declaration.

13 Through this detailed process, the Pool Committee eventually identified two
14 primary options for the pool, either a major repair job which would cost
15 approximately \$650,000, or a decommissioning of the pool which would cost
16 approximately \$200,000. Given the advanced state of disrepair of the pool, and its
17 estimated useful life of "zero years," these were in fact the only realistic options. As
18 noted, the Harrison Declaration and the details contained therein prove that the
19 options presented to the Members in the May, 2013 ballot were well vetted, well
20 supported, **and were the only realistic options for moving forward.** So the
21 ballot to Members was meticulously prepared, after a thorough and complete
22 Member-run process. The Pool Committee work fed directly into the formation of
23 the ballot distributed to Members. Corliss Decl., ¶ 13.

24 As the Court will recall, in May of 2013, pursuant to Club Bylaws this ballot
25 was circulated to Club Members to determine the future of our pool. Two options
26 were provided for Members to vote on: (1) a special assessment of \$200,000 to
27 decommission/remove the pool, or (2) a special assessment of \$650,000 to repair the
28 pool and bring it up to standards. With their ballot, each Member also received a

1 two page “Frequently Asked Questions” document. This document explained in
2 detail the various options and issues related to the pool vote. A true and correct
3 copy of this Frequently Asked Questions document is attached as Exhibit E to the
4 Corliss Declaration. Among other things, this document discussed the estimates for
5 repair or removal of the pool, the various financing options, and ADA compliance.
6 Corliss Decl., ¶¶ 14-15.

7 Prior to the vote, in addition to the detailed work of the Pool Committee, the
8 pool issue had been debated and discussed within the Cove community for many
9 years. Any Club Member such as Mr. Wilbur with an interest in the pool had ample
10 time and opportunity, before the vote, to be fully advised about every part of the
11 pool dispute. Indeed, Mr. Wilbur had an opportunity to participate as a member of
12 the Pool Committee, but chose to abandon that involvement. Club Members voted
13 with their eyes wide open. Corliss Decl., ¶ 16.

14 The result of the vote was 166 Members in favor of closing the pool, 153 in
15 favor of an assessment to keep the pool open. So a majority of the 319 voting
16 Members chose to close the pool. Ms. Corliss and other Declarants voted with the
17 majority to close the pool. Corliss Decl., ¶ 17.

18 **E. THE OBVIOUS FLAWS IN MR. WILBUR’S ARGUMENTS**

19 Mr. Wilbur is now seeking to overturn the majority will of Club Members and
20 force the Club to keep the pool open. This will result in the imposition of very large
21 special assessments against each Club Member, without consent as required by the
22 Bylaws. These assessments will have a significant financial impact on Ms. Corliss
23 and other similarly situated Members who are on fixed incomes and who have
24 limited assets. Many members, who do not use the pool, will not be able to afford
25 these assessments. This will impose a severe financial burden for many people, as
26 discussed in the accompanying Declarations. The Declarants oppose the imposition
27 of these assessments against them. Corliss Decl., ¶ 18.

28 In his cross-Motion, Mr. Wilbur seeks to end this case now, without a trial,

1 and requests a Permanent Injunction. Mr. Wilbur now asks the Court to
2 “affirmatively require and direct” the Club to conduct significant repairs to the pool.
3 Motion for Summary Judgment at 2. He asks the Court to order the Club to
4 “implement an annual budget that provides for sufficient funds, from dues and
5 assessments,” to effectuate these repairs and maintenance. Id. In other words, Mr.
6 Wilbur is asking the Court to take over Club affairs as it regards the repair,
7 maintenance, budgeting, and assessments against Members related to the pool. He
8 does this without even estimating in his Motion how much this will cost the 600
9 Club Members who would be subject to this Order. Corliss Decl., ¶ 20.

10 The Injunction requested would violate the Club Bylaws in numerous
11 respects. It would eliminate Club control over its own facilities and property. It
12 would eliminate the entitlement of all Club Members to vote on budgetary and
13 assessment issues, an entitlement enshrined in the Bylaws. It would overturn the
14 vote of Club Members, pursuant to the Bylaws, regarding the disposition of the pool.
15 And it would impose large financial assessments against all 600 Club Members,
16 who will have no say in the matter or ability to vote. Corliss Decl., ¶ 21.

17 Mr. Wilbur has argued in this case that he has some sort of vested
18 enforceable property right to force the entire Cove organization, which includes 600
19 Members, to continue to own, operate and maintain a swimming pool that was
20 present on the date that he purchased his property. To support this proposition, he
21 refers repeatedly, but vaguely, to the formation documents of the Club, arguing that
22 within these documents can somewhere be found an enforceable property right,
23 running to him, in the continued existence of the pool. In this regard, he makes
24 unsupported statements such as: “ACBC was formed for the principal purpose of
25 providing and operating recreational facilities, which specifically included the
26 community pool.” See Wilbur Declaration in Support of Amended MSJ, ¶ 4.
27 However, he usually provides no citation or exhibit to support these conclusory
28 statements. In fact, there is no evidence to support the proposition that the primary

1 purpose of the Club was for the operation of a swimming pool. Nor is there any
2 evidence to support Mr. Wilbur's argument that he acquired some enforceable
3 property right related to the pool. Corliss Decl., ¶¶ 22-23.

4 **F. CLUB FORMATION AND PROPERTY DOCUMENTS**

5 In 1969, when the Cove development was organized and the Club was
6 constituted, there were two primary formation documents. These documents were
7 recorded. These were the Articles of Incorporation of the Admiral's Cove Beach
8 Club, and the Restrictive Covenants Running With Land of the preexisting
9 Admirals Cove Inc. These documents provide the starting point for determining the
10 purposes and powers, and the obligations and rights, of the property
11 owners/Members within the Cove, and of the Club itself. A true and accurate copy
12 of the Articles of Incorporation and the Restrictive Covenants are attached as
13 Exhibit F and to the Corliss Declaration. Corliss Decl., ¶ 24.

14 Despite Mr. Wilbur's repeated suggestions to the contrary, neither of these
15 documents makes any mention whatsoever of a swimming pool. The pool is not
16 referenced or mentioned either in the Articles of Incorporation or the Restrictive
17 Covenants. Therefore, Wilbur's repeated assertion that these formation documents
18 somehow vest in him an individual property right to a swimming pool is without
19 any support in the documents themselves. A reasonable land owner, reviewing
20 these formation documents, would have no basis to conclude that they are gaining
21 an enforceable property right to the continued operation of a swimming pool. By
22 their plain terms, these documents simply do not establish any such entitlement.
23 Corliss Decl., ¶ 25.

24 On the other hand, the Articles of Incorporation specifically provide that the
25 Club can, at its discretion, transfer, sell, convey, close, or otherwise dispose of or
26 amend its assets and holdings. Article V, Paragraph 4 of the Articles states, among
27 the power of the Club, to: "Purchase, take, receive, lease, take by gift, devise or
28 bequest, or otherwise acquire, own, hold, approve, use and otherwise deal in and

1 with real or personal property or any interest therein wherever situated.” Corliss
2 Decl., Ex. F at 2 (Article V, ¶ 4). Paragraph 5 of this Article further grants to Club
3 the power: “To sell, convey, mortgage, pledge, lease, exchange, transfer and
4 otherwise dispose of all or any part of the property and assets.” Id.

5 A purchaser such as Mr. Wilbur was on notice, through these preexisting
6 formation documents, that the Club had the power to both acquire, and to “transfer
7 and otherwise dispose of all or any part of the property and assets” of the Club. By
8 the clear and unambiguous meaning of these words, the Club has the right and the
9 power to dispose of the swimming pool. This right was clearly announced in plain
10 language in the formation documents themselves, which were recorded at the time
11 Mr. Wilbur purchased his property. This clear statement of Club powers stands in
12 stark contrast to Mr. Wilbur’s argument that this same document somehow compels
13 the continued operation of the pool, forever. His reading is not supported by any
14 language in the documents. Yet the opposite reading – that the Club is empowered
15 to dispose of the pool if it chooses to – is supported by clear and unambiguous
16 language. Corliss Decl., ¶ 28.

17 In support of his Injunction requests, Mr. Wilbur repeatedly, but vaguely,
18 argues that “deeds” associated with Cove property somehow conveyed to him
19 specifically a property right in the perpetual operation of a swimming pool. Wilbur
20 repeatedly references “original deeds” of the land, whatever those are. See Wilbur
21 Decl., ¶ 8-9. However, none of these “original deeds” are submitted as exhibits to
22 this Motion, and Mr. Wilbur makes specific reference to only one “original deed,”
23 which is not for his lot. Moreover, there is no assertion, or evidentiary support, that
24 any “original deed” **applicable to Mr. Wilbur’s lot** has language referring to a
25 swimming pool. No evidence is presented regarding what the “original deeds” are,
26 when they were conveyed, or to whom they were conveyed. Nor is evidence showing
27 whether such “original deeds” mentioning a pool exist for all lots within the Cove, or
28 some limited number of lots, or a single lot, or Mr. Wilbur’s lot. Certainly, Mr.

1 Wilbur’s unsupported assertion about “original deeds” is not sufficient to show that
2 he, personally, on his lot, has some right to enforce the continued existence of a
3 swimming pool. And unless he can show the existence of a Deed on his own lot
4 specifically conveying an interest in a pool to him, Mr. Wilbur cannot claim a
5 property right. Corliss Decl., ¶ 29. Mr. Wilbur’s own property deed, conveying to
6 him his property in the Cove, nowhere mentions a swimming pool. A true and
7 accurate copy of Wilbur’s recorded Deed is attached as Exhibit H to the Corliss
8 Declaration.

9 Mr. Wilbur also repeated argues that the Club Bylaws somehow convey to
10 him an individual property right to the forever operation of a swimming pool. In
11 this regard, it is worth noting that the Bylaws, which are an internal governing
12 document, are subject to change, modification, and revision by a simple majority
13 vote of Club Members. Corliss Decl., Ex. A, Bylaws, Article 16. Any resulting, new
14 versions of the Bylaws “shall supercede any and all previous versions.” *Id.* There is
15 no logic to the proposition that someone can acquire a permanent property right by
16 reference to internal Bylaws. Such Bylaws change over time, yet by Mr. Wilbur’s
17 logic they could never change, at least in reference to the pool he prefers. Under the
18 Bylaws, a majority of Members could, by a simple vote, remove any reference to a
19 swimming pool. Under these circumstances, the Bylaws cannot vest in any single
20 Member an absolute enforceable property right of the kind asserted by Mr. Wilbur.

21 Nor is any case law or statute cited for the proposition that such Bylaws form
22 the basis for enforceable property rights among individual members. Corliss Decl., ¶
23 31. In fact, there is absolutely no specific case law cited for any property law
24 argument presented by Mr. Wilbur.

24 **G. MR. FREDRICK’S QUESTIONABLE CONDUCT AS A BOARD**
25 **MEMBER**

26 On the last go-round for this Motion, many Members were surprised to learn
27 that the Club has decided not to oppose Mr. Wilbur’s request for a Permanent
28

1 Injunction mandating expensive repairs to the pool, for his benefit. It is worth
2 noting that the former co-plaintiff in this case, Dustin Frederick, is now a member
3 of the Club Board. As a former plaintiff in this litigation, Mr. Frederick, as a
4 fiduciary for all Club Members, would have been expected to recuse himself from all
5 Board action and consideration of pool issues. However, he has not done so. In fact,
6 Mr. Frederick apparently has used his Board position to aggressively push for the
7 agenda that he previously pursued in this litigation. He may be privy to private
8 Board discussions, in Executive Session, about the pool. It is also reasonable to
9 assume that he shares the information he learns through Board deliberations with
10 his former co-plaintiff, Mr. Wilbur. Corliss Decl., ¶ 32.

11 In discovery, Mr. Wilbur refused to produce any of his communications or
12 correspondence with Mr. Friderick, even after the date that Mr. Frederick quit as
13 co-plaintiff in this case and became a Board member. In fact, Mr. Wilbur has
14 refused to produce even a single document in response to any discovery request.
15 Therefore, Intervenor has not, to date, had an opportunity to evaluate the scope of
16 possible collusion between Mr. Wilbur and Mr. Frederick. This will be the subject of
17 a separate Motion to Compel.

18 **H. RECENT CLUB ACTIVITY TO ADDRESS THE POOL ISSUE**

19 The Club Membership took recent steps, pursuant to the Bylaws, to study
20 and move forward on alternative plans for the use of the underutilized property
21 where the pool is currently located. This is in keeping with the Articles of
22 Incorporation of the Club, which clearly allow the Club to “dispose of” the pool and
23 to develop and acquire other property and facilities. Corliss Decl., ¶ 33. At an
24 Annual Meeting of the Club on October 25, 2014, pursuant to the Bylaws a Member
25 Motion was passed creating a Member Committee called “Alternate Visions.” This
26 Committee has been formed to “evaluate an alternative recreational use for the
27 property on which the current pool is located so that it will become an asset that is a
28 year-round indoor facility. The ad hoc committee will compare the costs and

1 benefits of an indoor recreational and conference facility to the costs of operating
2 and refurbishing the pool[.]” Corliss Decl., ¶ 34; See also Deegan Declaration, ¶ 6.
3 Through this Committee, Club Membership intends to move forward to evaluate
4 alternate uses for the pool area. This may include “how revenue generated from an
5 indoor recreational facility could potentially be used to fund a pool on an alternative
6 site.” Id.

7 Through this work, Club Membership may develop plans and proposals for
8 the pool area – which is now simply wasted space for the vast majority of every year
9 and is only used by a small fraction of Club members – into a year round facility
10 that could benefit all Club members and that could generate revenue for the Club.

11 III. ARGUMENT

12 This is a summary judgment motion, and as such it cannot be granted if
13 there is any genuine issue of material fact for trial. In this case, Mr. Wilbur seeks a
14 final ruling on his Declaratory Judgment request. However, the law is clear: A final
15 Declaratory ruling cannot impose obligations on people who are not parties. RCW
16 7.24.110. Here, the Injunction requested would require the Cove to “**approve and**
17 **implement**” a budget “that provides for sufficient funds, **from dues and**
18 **assessments**, to maintain the swimming pool and other community assets,
19 including the accumulation of reserves for repair and maintenance.” Amended
20 Motion at 3. Therefore, the request relief would subject all 600 Cove Members to
21 liability for these “dues and assessments.” This is improper under Washington law
22 and summary judgment denying declaratory relief and an injunction should be
23 granted on this basis.

24 Also, in his cross-Motion, Mr. Wilbur is requesting Summary Judgment on a
25 Mandatory Injunction. Such Mandatory Injunctions are highly disfavored. Stanley
26 v. University of S. Cal., 13 F.3d 1313, 1320 (9th Cir. 1994). Such Injunctions should
27 be “denied unless the facts and law clearly favor the moving party.” Stanley, 13
28 F.3d at 1320; see also Park Village Apartment Tenants Ass’n v. Mortimer Howard

1 Trust, 636 F.3d 1150, 1160 (9th Cir. 2011).

2 **A. MR. WILBUR FAILS TO PROVE THE EXISTENCE OF A CLEAR**
3 **LEGAL RIGHT**

4 Summary Judgment should be granted dismissing Mr. Wilbur’s request for
5 an Injunction. As discussed above, Mr. Wilbur offers no legal support whatsoever
6 for the proposition that he somehow acquired an enforceable individual property
7 right in the perpetual operation of the swimming pool. No legal underpinning for
8 that assertion is known to exist. Without a clear statement of the legal principal
9 involved, there can be no material issue of fact pursuant to that principal.
10 Moreover, as noted above, the legal concept proposed would violate basic tenants of
11 well-established property law. These include the enumerated powers of
12 condominiums, homeowner’s associations, and other community organizations
13 related to real property.

14 Mr. Wilbur’s factual assertions fail from the same basic lack of support. Mr.
15 Wilbur nowhere specifies the specific chain of property conveyance where he,
16 himself, on his lot, acquired an individual property right to enforce the continued
17 operation of the swimming pool. From what specific document did he, and he
18 specifically, derive this right? In what specific transaction did he, and he
19 specifically, acquire this right? The undersigned respectfully submits that the
20 reason Mr. Wilbur’s factual assertions – regarding “original deeds” and the Articles
21 of Incorporation, for example – are so vague is because he is unable to demonstrate
22 a clear chain of Title which vested in him specifically an enforceable property right
23 in the pool.

24 It is noteworthy that, unlike in condominium developments, here there is no
25 joint ownership of “common areas” relating to the pool. Rather, the “community”
26 lots, including the lot where the pool is located, are wholly and individually owned,
27 in fee, by the Admiral’s Cove Beach Club itself. See Exhibit B. Mr. Wilbur has no
28 individual, or shared, ownership interest in the land upon which the pool sits.

1 As discussed above, the Articles of Incorporation and the Restrictive
2 Covenants were recorded on the Cove property when Mr. Wilbur purchased his lots.
3 Neither one of these makes any mention whatsoever of a pool. They simply cannot
4 form the basis for an individual, enforceable, specific property right running to Mr.
5 Wilbur's lot regarding the pool. Moreover, despite Mr. Wilbur's repeated, but
6 vague, assertions regarding "original deeds," there is no showing that an "original
7 deed" **on Mr. Wilbur's lot** says anything about a swimming pool. There is no
8 evidence of how many such "original deeds" exist, what lots they were recorded on,
9 what exactly they say, and how many lots they apply to. Without showing, at the
10 very least, that some "original deed" applicable **to his specific lot** includes
11 language discussing a swimming pool, this argument simply misses the mark.
12 Moreover, there is no legal basis to conclude that an "original deed," from some
13 long-ago moment in time, somehow fed into Mr. Wilbur's purchase and conveyed **to**
14 **him specifically** any right whatsoever. No citation for that proposition is
15 provided.

16 Again, the specific transaction, and property document, from which Mr.
17 Wilbur claims to have derived an enforceable ownership interest in the pool is
18 unclear. This is particularly glaring because Mr. Wilbur's own deed, conveying his
19 lot to him, makes no mention of a swimming pool. Exhibit H. Such are "material
20 issues of fact," and it is Mr. Wilbur's burden to prove that such material issues don't
21 exist. He has not met that burden.

22 While they make no mention whatsoever of a pool, the Articles of
23 Incorporation do clearly convey to the Club the power to sell, transfer, or otherwise
24 "dispose of" its property and its assets. This clear, unambiguous language puts
25 every purchaser (such as Mr. Wilbur) on notice that the Club can, at its election,
26 dispose of the pool or any other element of its property or facilities. Unambiguous
27 language in property documents is given its plain meaning. See Niemann v.
28 Vaughn Community Church, 154 Wn.2d 365, 374 (2005). There is nothing

1 ambiguous about the enumerated power to “dispose of” Club assets.

2 Club decisions on such issues are in turn governed by the Bylaws, through
3 which the Members exercise democratic control over Club finances and operations.
4 The Members exercised that franchise when they studied, for six months, issues
5 related to the pool. They met and communicated regularly, received expert
6 analysis, and developed a set of options based on that analysis. The Club then held
7 a Member vote **on the only two viable options**: repair, or elimination. A
8 majority of Club Members voted to eliminate the pool, and to approve the \$200,000
9 assessment to cover that expense. Mr. Wilbur now sues to overturn that vote, and
10 he acquired a TRO to prevent its implementation. That TRO should be lifted
11 pursuant to RCW 7.40.180.

12 Mr. Wilbur’s argument that the Bylaws somehow convey to him an
13 enforceable property right is specious. Those Bylaws are subject to change by a
14 simple majority vote of the Members. There is no principal of property law, and
15 none is cited, where a set of managing Bylaws is held to convey, to every property
16 owner, an absolute right to preserve the Bylaws as they existed on the date of
17 purchase. That concept flies in the face of the law governing member-managed
18 property developments, starting with Washington’s Condominium Act, RCW
19 64.34.005 *et seq.* Moreover, the same Bylaws require a majority vote of the
20 Members before any assessment or significant dues increase. Yet Mr. Wilbur is
21 asking this Court to compel very large assessments against all 600 Members,
22 without their consent and against their wishes as expressed by their prior vote. It
23 is not fair to embrace the Bylaws, on the one hand, and seek to override and usurp
24 them, on the other. The members voted, pursuant to the Bylaws, to decommission
the pool. That vote was valid and it should be implemented.

25 **C. THE COURT SHOULD DISSOLVE THE PRESENT INJUNCTION**

26 A trial court upon considering whether to grant or deny an injunction may
27 weigh as equitable factors: (a) the nature of the interest claimed, (b) the relative
28

1 adequacy of an injunction in comparison with other remedies, (c) the delay, if any,
2 in bringing suit, (d) the misconduct of the plaintiff if any, (e) the relative hardship
3 likely to result to the defendant if an injunction is granted and to the plaintiff if it is
4 denied, (f) the interest of third persons and of the public, and (g) the practicability of
5 framing and enforcing the order or judgment. Steele v. Queen City Broadcasting
6 Co., 54 Wash.2d 402, 341 P.2d 499 (1959); 4 Restatement of Torts § 936 (1939).

7 Here, as discussed above Mr. Wilbur has failed in his obligation to prove his
8 clear entitlement to the property interest he claims. Moreover, the weighing of
9 hardships, and the interests of third persons, weigh extremely heavily against the
10 continuation of an injunction. Obviously, the Court's TRO has thrown the Club's
11 operations into disarray, and has resulted in continued conflict and struggle over an
12 issue the Club worked hard to resolve through democratic means. Mr. Wilbur's
13 individual litigation has already had a negative effect on the entire Cove
14 community. It has also apparently thrown the Club's Board into some disarray. As
15 seen in the Club's responsive filing the first time around, the Board could not even
16 agree on a position, telling the Court that it could "take no position" on the Motion.

17 To compound matters, Mr. Wilbur now asks for a permanent, Mandatory
18 Injunction which would impose on all 600 Members the obligation to pay significant
19 assessments for major repairs to the pool. This is a financial hardship that many
20 members of the community, who are on fixed incomes with limited assets, cannot
21 afford to bear. See, e.g., Declarations of Nichols and Bauer, filed herewith. The
22 countervailing interest – Mr. Wilbur's desire to use an uncovered, outdoor
23 swimming pool at his pleasure on rare occasions when Northwest weather permits –
24 pales in comparison to the burdens faced by the entire Cove Membership if the
25 Injunction is continued.

26 Ms. Corliss, as Intervenor, has joined this case to try and protect the
27 "interests of third parties," and to alert the Court to the hardships caused by the
28 Injunction. This is especially important because the Cove's Board has decided it

1 cannot or will not take a position on Mr. Wilbur's Motion. The majority of Cove
2 Members who voted to close the pool deserve a voice in this case.

3 **IV. CONCLUSION**

4 The vote of Cove members in May 2013 was entirely proper and valid.
5 Plaintiff's injunction, if granted, would have a major financial impact on all 600
6 Members of the Cove Community. These Members studied carefully and decided
7 the difficult issue of "what to do with our pool?" through an approved democratic
8 process. While some may disagree with the decision, this was the majority will of
9 the Members as expressed through their own Bylaws. A single Member now seeks
10 to usurp that process and impose his preferred outcome on all 600 Members. He
11 does so without showing any entitlement to the property right he claims.

12 This Court should dismiss Mr. Wilbur's claims on Summary Judgment, and
13 should dissolve the existing TRO. This will allow the Cove and its Membership to
14 move forward to implement democratic decisions previously made regarding the
15 pool.

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17 Respectfully Submitted,

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22 _____
23 Jay Carlson, WSBA 30411
24 Attorney for Intervenor Susan Corliss

1 **DECLARATION OF SERVICE**

2 On January 16, 2015, I, Jay Carlson, caused to be served a true and correct
3 copy of this Motion document, by electronic service as previously agreed among the
4 parties, to:

5 Christopher Nye
6 Attorney for Admirals Cove Beach Clum

7 Christon Skinner
8 Attorney for Plaintiff

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