

No. 73725-2-I

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

SUSAN CORLISS,

Appellant,

vs.

ADMIRAL'S COVE BEACH CLUB, ROBERT WILBUR, et al,

Respondents.

REPLY BRIEF OF APPELLANT SUSAN CORLISS

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Wilbur argues that the formation and governing documents of the Admiral's Cove Beach Club somehow create an enforceable contractual promise from the Club, to him, of a forever swimming pool operating on Club property for his pleasure. Yet nowhere in any of the documents he references is there any such promise, either explicit or implicit. There is no language even approximating: "The Club will always operate and maintain a swimming pool for its members." Wilbur can point to no such language.

Wilbur instead argues for a convoluted interpretation concerning the "purposes" of the Club as stated in the Articles of Incorporation, and certain committee provisions in the Club bylaws, to conjure a contractual provision that does not exist. Wilbur's strained attempt to find a contractual promise does not establish, as a matter of law, that such a promise was ever made.

Wilbur complains that Corliss' argument regarding the formation documents is presented "without case law." This is because the argument is very simple. Clear, unambiguous provisions of the Articles of Incorporation grant the Club the power to "dispose of" any of its assets. Unquestionably, the pool is such an asset. Therefore, any purchaser reviewing the Articles of Incorporation was put on clear notice that the Club had the power, at its discretion, to "dispose of" the pool. If the Articles of Incorporation are a contract, this is a clear, unambiguous provision within that contract. No exception is made for the swimming pool. Indeed, the Articles of Incorporation (and the Restrictive Covenants) make no mention whatsoever of a swimming pool.

This clear, unambiguous language stands in stark contrast to the strained reading of the “contract” put forward by Wilbur. While the stated “purposes” of the Club includes “recreational facilities,” there are multiple recreational facilities present at the Club. The most valuable and central of these is the Club-owned waterfront beach area. And while a purpose of the Club may be to manage such facilities for members, there is no language anywhere providing that any specific facility cannot be “disposed of.” Could the Club dispose of its basketball court? Could it dispose of its covered picnic area? Of course it could. Likewise, the Club has the power to “dispose of” its swimming pool. The “dispose of” provision is crystal clear. This clear and unambiguous language takes precedence over the convoluted reading by Wilbur, and controls the outcome of this case.

As for the argument regarding the work of the pool committee in 2012-2013 (which led to the community vote to decommission of the pool), Wilbur fails to show how the committee’s work was outside the scope of the October 2012 motion. That motion clearly called for the committee to study the needs of the pool, and report back to the Club board about options. This is exactly what the committee did. After careful, extensive study, only two options existed: repair the pool at a cost of approximately \$650,000, or decommission and remove the pool. Those options – the only existing options – were then presented to the Community on a ballot. Given the requirement in Club bylaws that all special assessments must be approved by a vote of the community, this vote was **required** if the community was to

repair its pool and keep it operating. Therefore, this ballot and the vote was entirely in keeping with the “overall objective of having the pool open as soon as a funding and construction schedule allow[.]” Respondent’s Brief at 4. The community was given the opportunity to do just that. In their May 2013 vote, the community **rejected** that option and chose the only other option – decommissioning. This was entirely in keeping with the intention and scope of the pool committee.

The bottom line is that the Club community voted, democratically, to dispose of their dilapidated swimming pool. They had every right to do so. Wilbur’s argument that there was some enforceable contractual promise, from the Club to him, for a forever swimming pool is simply wrong. There is no such contractual provision. Wilbur has not established, as a matter of law, that there was such a promise. On the contrary, there is a clear and unambiguous provision granting the Club the power to “dispose of” any of its assets, including its swimming pool. The power to “dispose of” assets is established as a matter of law.

Corliss respectfully urges this Court to reverse the findings of the trial court, and to Order that the vote of the Community in May 2013 be implemented. This will return the parties to the status quo that existed at the time that the first TRO was entered in this case.

Respectfully submitted,

/s/ _____
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DECLARATION OF SERVICE

The undersigned declares under the penalty of perjury, under the laws of the State of Washington, that the following is true and correct.

That on April 18, 2016, I served the attached Reply Brief of Appellant, to the parties to this action via email (pursuant to previous agreement):

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DATED at Seattle, Washington this 18th day of April, 2016.

/s/ _____
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