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5 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**  
6  
7 **IN AND FOR THE COUNTY OF ISLAND**

8 **ROBERT WILBUR and DUSTIN**  
9 **FREDERICK,**  
10 **Plaintiffs,**

11 **vs.**

12 **ADMIRAL'S COVE BEACH CLUB, a**  
13 **Washington non-profit corporation;**  
14 **and JEAN SALLS, MARIA**  
15 **CHAMBERLAIN, KAREN SHAAK,**  
16 **ROBERT PEETZ, ELSA PALMER, ED**  
17 **DELAHANTY AND DAN JONES,**  
18 **individuals,**

19 **Defendants.**

20 \_\_\_\_\_  
21 **SUE CORLISS,**

22 **Intervenor,**

23 **vs.**

24 **DUSTIN FREDERICK, ROBERT**  
25 **WILBUR, ADMIRAL'S COVE BEACH**  
26 **CLUB, a Washington non-profit**  
27 **corporation, and its BOARD OF**  
28 **DIRECTORS.**

29 **Defendants.**

**NO. 13-2-00741-4**

**DECLARATION OF ROBERT**  
**WILBUR IN SUPPORT OF**  
**AMENDED MOTION FOR**  
**SUMMARY JUDGMENT**

30 **UNDER PENALTY OF PERJURY AND PURSUANT TO THE LAWS OF THE**  
31 **STATE OF WASHINGTON, I CERTIFY THAT THE FOLLOWING IS TRUE AND**  
32 **CORRECT:**

\_\_\_\_\_  
DECLARATION OF BOB WILBUR RE:  
AMENDED MOTION FOR SUMMARY JUDGMENT  
Page 1

LAW OFFICES OF  
**Christon C. Skinner P.S.**  
791 SE Barrington Drive  
Oak Harbor WA 98277  
Tel. (360) 679 1240 · Fax (360) 679 9131

- 1 1. My name is Robert Wilbur and I am one of the Plaintiffs in the above captioned  
2 case. I am over the age of 18 years and competent to be a witness. This  
3 declaration is submitted in support of my "amended" motion for Summary  
4 Judgment. The amendments to my motion relate to the significance of language  
5 in deeds issued to persons who own property within the plat of Admirals Cove  
6 Beach Club ("ACBC"). Specifically, even though the deed language is another  
7 factor that the court should consider when deciding whether to grant the  
8 injunctive relief I am requesting, it is not my intent to have the court enjoin any  
9 actions to decommission the ACBC swimming pool and related facilities if the  
10 members vote to change the object and purposes of ACBC as provided in the  
11 Articles and Bylaws.  
12
- 13 2. The only remaining Defendant in this case is Admiral's Cove Beach Club. The  
14 individual members were dismissed by agreement. Accordingly, my motion  
15 seeks the entry of a summary judgment order affecting the rights and  
16 obligations of defendant Admiral's Cove Beach Club and its governing body,  
17 i.e., the board of directors collectively.  
18
- 19 3. I purchased a lot within the Plat or Tract of Admiral's Cove on March 6, 2006. I  
20 am a member of Admiral's Cove Beach Club.  
21
- 22 4. The Admiral's Cove Beach Club was formed to promote and maintain  
23 "recreational activities." Since the only recreational facility in existence at the  
24 time was the Admiral's Cove swimming pool, I believed that the pool would be  
25 maintained by the association and its governing body for as long as I owned the  
26 lot – as well as be a continuing asset to a buyer(s) of the property. Admiral's  
27 Cove Beach Club. was formed on June 2, 1969. ACBC was formed for the  
28 principal purpose of providing and operating recreational facilities, which  
29 specifically included the community pool, for the benefit of its members, and to  
30 procure, maintain, operate and protect recreational opportunities for the  
31 members of the community per Article II of the ACBC Bylaws.  
32

- 1 5. The primary recreational asset owned by ACBC is a large lap (Competition-  
2 sized) swimming pool and pool building/locker room/lavatory located on  
3 property owned by ACBC. Article XII of the Bylaws provides for two standing  
4 committees with direct responsibilities to the pool (the Pool Operations and  
5 Safety Committee and the Pool Maintenance and Improvement Committee) and  
6 a third committee with broad responsibilities for planning facility enhancements  
7 including the pool and pool building (Long Range Planning and Building  
8 Committee).
- 9
- 10 6. The Plat of Admiral's Cove consists of Divisions 1 through 7, and the property  
11 owners within this plat are entitled, by virtue of their ownership, to a  
12 membership in the non-profit corporation known as Admiral's Cove Beach Club,  
13 which includes a pool. The binding agreement entered into December 15, 1969,  
14 between Admiral's Cove, Inc., and Admiral's Cove Beach Club conveyed "real  
15 property including the swimming pool and facilities located thereon to Club  
16 [Admiral's Cove Beach Club]."
- 17
- 18 7. One of the compelling factors related to my purchase of my property within the  
19 ACBC plat was the fact that my family and I were not only acquiring a  
20 neighborhood-partnered interest in the property within the plat; but also certain  
21 beach rights, common areas, recreational areas and a beautifully located,  
22 competition-sized swimming pool – all as part of our ownership of the lot within  
23 the Plat of Admiral's Cove.
- 24
- 25 8. The original grant of deed for several parcels of property within the Admiral's  
26 Cove plat conveyed both the real estate and "one family membership in  
27 Admiral's Cove Beach Club, Inc. (sic), a Washington nonprofit corporation,  
28 which will own and maintain certain beach rights, recreational areas, swimming  
29 pool and other tracts, as shown on plat of Admirals Cove... ."
- 30
- 31 9. The requirement of a swimming pool is stated in these original deeds, which  
32 specifically mention the pool.

1 10. No other recreational facility is specifically mentioned, and the pool is (and  
2 since the inception of ACBC has been) by far the only significant and capital-  
3 intensive recreational/athletic facility provided by ACBC. The association's  
4 purposes and "object" as set out and described in the Articles, and Bylaws of  
5 ACBC, created an expectation in my mind, that ownership of my property within  
6 the plat conferred to me a right to have the swimming pool and related facilities  
7 remain intact and properly maintained by the association as a whole. Since the  
8 swimming pool is the cornerstone of community recreation and athletic  
9 opportunity in this plat and no other "recreational facility" exists, I fully expected  
10 that the members and board of ACBC would keep the pool and its facilities  
11 open and operational unless and until ACBC's purposes as an organization  
12 changed  
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15 11. The ACBC Articles of Incorporation provide that the "purpose" of Admirals Cove  
16 Beach Club is to "construct, install, maintain and/or own and operate athletic  
17 and recreational facilities of all types and kinds for the benefit of the members."  
18 The club's swimming pool is the centerpiece of the athletic and recreational  
19 facilities, and the only athletic facility of appeal to and practical use by all ages,  
20 from the very young to aging seniors, and as such promotes families and  
21 community members the opportunity to share recreation and social intercourse,  
22 as provided in Article V, ¶ 2. The only lavatory facilities are located in the pool  
23 building, further conveying a presumption of a continued presence and  
24 existence of the pool and its central importance.  
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27 12. Purchasers of real estate located in Admiral's Cove were on "notice" about the  
28 content of the ACBC Articles and Bylaws because the Articles and Bylaws are  
29 filed with the auditor and "of record" in Island County, Washington. The original  
30 Articles and Bylaws were recorded in Island County, Washington in 1969 and  
31 the Bylaws were re-recorded in 1986. Because of the conditions set out in the  
32 recorded bylaws and articles, all property owners are obligated to participate in

1 participate in the cost of the pool's repairs, rehabilitation and future  
2 maintenance. See Article V. ¶1 and ¶8 of the Articles of Incorporation.

3  
4 13. ACBC is governed by a board of directors who are elected by and serve at the  
5 pleasure of the membership.

6 14. The swimming pool and building and associated lavatory/locker facility is in  
7 need of substantial maintenance, repair and renovation. Part of the reason that  
8 substantial repair and maintenance is needed is the fact that previously elected  
9 boards of directors failed or refused to levy special assessments against the  
10 property owners or set annual dues high enough to cover the actual  
11 maintenance and operational costs of the swimming pool.

12  
13 15. At the 2012 annual member meeting, a motion was unanimously approved by  
14 the membership that provided that two standing ACBC committees (the Pool  
15 Maintenance and Improvement Committee and the Long Range Planning and  
16 Building Committee) were to identify and evaluate various rehabilitation options  
17 relating to the pool and the pool building, and to recommend the best  
18 rehabilitation options. The members' Motion charged these committees with  
19 three tasks The Motion is part of the record.

20  
21 16. The Motion provided that the committees would investigate and develop repair  
22 and refurbishment plans along with payment options related to assessment  
23 costs and financing. The Motion also provided that the committees shall submit  
24 findings to the Board and "subsequently work with the Board to develop an  
25 appropriate ballot". The Board that was then in office failed to honor and  
26 comply with all of the Motion-specified tasks.

27  
28 17. The Motion that was passed had no provision or contingency regarding  
29 "decommissioning" of the swimming pool.

30 18. The Bylaws in effect at the time of this meeting clearly presupposed the  
31 existence of the pool, and any action taken that would decommission the pool  
32 would be contrary to the Bylaws, the Articles, and the deeds of some members.

1 Thus, any assessments or special assessments levied for the purpose of  
2 *decommissioning* the pool would be contrary to the Bylaws, Articles, and some  
3 of the deeds conveyed to some property owners within the plat of ACBC and  
4 thus void. Similarly, the Board's failure to properly maintain the pool and its  
5 facilities are omissions contrary to the general purpose and object of ACBC as  
6 described in its Articles and Bylaws.

7  
8 19. The majority of the Board of Directors of ACBC then in office, honored neither  
9 the letter nor the spirit of the Motion through their actions. Specifically, the  
10 Board submitted a ballot to the membership which contravened the Motion.  
11 The ballot was plainly inconsistent with the October 27, 2012 Motion since its  
12 focus was on decommissioning the swimming pool and not means for  
13 preserving and maintaining it.

14  
15 20. By allowing the membership to determine whether or not to fund needed  
16 maintenance, past Boards of Directors have also failed to discharge their  
17 fiduciary responsibilities to ACBC members by failing to require sufficient  
18 annual dues or special assessments to cover ACBC's property maintenance  
19 and repair needs.

20  
21 21. The former Board's actions over the written objections of members of the two  
22 committees charged to work with the Board to prepare the pool ballot (per the  
23 October 2102 motion) demonstrated an intent to demolish or decommission the  
24 swimming pool in spite of the inconsistency of such action with the Articles and  
25 Bylaws of ACBC.

26  
27 22. In the early summer of 2012, various maintenance and operational issues  
28 caused the pool to be opened for a short period and then closed. The Board  
29 acquired information from various sources on repairs and cost estimates. Talk  
30 began among members of ACBC and the Board about the need for a special  
31 assessment to bring the pool up to standards. Arguments arose about whether  
32

1 all repairs were needed at once and whether the need for repair was inflated.  
2 Also, members disagreed about whether repairs and upgrades should be  
3 spread over several years or so or had to be done in one project.

4 23. In September 2012, the formerly elected Board held three, "town hall" style  
5 meetings to explain the repairs needed and to take suggestions. At the two  
6 meetings I attended, I suggested formation of an ad hoc committee of both "pro  
7 pool" and "anti pool" members and Directors to examine the costs of repair and  
8 maintenance and to develop a plan going forward. The suggestion had wide  
9 support, but four members of the Board clearly were not interested and kept on  
10 their path to put their vision and assessment to a vote.  
11

12 24. The previously elected Board's failure and refusal to take steps to involve  
13 concerned members with an opportunity to develop options and solutions  
14 beyond the destruction and removal of the swimming pool prompted a  
15 movement among pro-pool members to attend the October annual meeting of  
16 ACBC in sufficient numbers to constitute a quorum. At the annual meeting, a  
17 motion was introduced to create an ad hoc committee to determine costs,  
18 examine funding options, and to develop an assessment ballot for the Board to  
19 advance to the general membership. The motion, at the behest of board  
20 member, Daniel Jones, was softened and tweaked a bit at the meeting, but the  
21 main mission remained in force and was passed unanimously by those in  
22 attendance.  
23

24 25. The motion that was approved at this meeting included a provision to have two  
25 pool committees assigned to handle the three tasks. Katherine Harris was  
26 appointed to chair the Pool Maintenance Committee. She was very slow calling  
27 for a meeting, the first occurring two months after the October motion was  
28 approved. The meeting, which took place on Friday in the morning, December  
29 28, 2012, was announced just seven days prior without any attempt made to  
30 arrange the time of the meeting with other committee members' schedules.  
31  
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1 Only four of the ten members were able to attend. Ideas and strategies were  
2 discussed, and there was an expectation of further discussion and decisions to  
3 be made at a subsequent meeting.

4 26. However, at the January 12, 2013, board of directors meeting, Katherine and  
5 the Board announced plans to get architects and pool experts involved. At that  
6 point Katherine and the Board took over (from the committee) the entire  
7 process of gathering cost estimates, a process that essentially co-opted and  
8 usurped the work that was supposed to have been done by the committee  
9 approved and desired by the membership.

10  
11 27. On January 22, 2013, Katherine announced the second meeting of the pool  
12 committee for January 27, 2013 (six days' notice) without any attempt to  
13 arrange an acceptable time and date for other members. Only four members  
14 were able to be there on a Sunday morning. Basically, from here on, the Board  
15 and Katherine took over the task of developing the costs, and there were no  
16 further meetings of the Board or the committees until after Katherine's "work"  
17 was completed.

18  
19 28. On March 28, 2013, Katherine announced that the final meeting of the Pool  
20 Maintenance Committee was going to be on April 11, 2013. She stated that this  
21 meeting was to include nearly all the ACBC Directors and that the architect's  
22 and "pool expert's" findings would be presented for review just two days before  
23 a scheduled meeting of the Board of Directors.

24  
25 29. By mid-April of 2013, it became quite clear to me that Katherine intended to  
26 ignore the second and third charges of the Motion (examination of funding  
27 options and subsequent ballot development). She simply turned the task of  
28 developing the ballot language over to the Board, and she held no further  
29 committee meetings..

30  
31 30. Numerous requests followed in late April and early May for committee  
32 involvement to examine the two remaining committee tasks i.e, funding options



1 for the preservation of the pool and developing an assessment ballot on that  
2 subject. Some committee members finally opted to hold an independently called  
3 meeting (May 3) to be attended by whoever could come to discuss those  
4 objectives. Dan Jones, Suzy Palmer, Sue Corliss (the intervenor in this lawsuit),  
5 Fred Salmon, Maria Chamberlain and Bob Wilbur attended. The meeting and  
6 follow-up emails relaying the meeting's results did nothing to persuade the  
7 Board to provide the pool committees an opportunity to participate in developing  
8 the ballot as mandated by the membership at the October meeting.  
9

10 31. By May 7, 2013, the ballot had been prepared by the Board, without input from  
11 the committees and in a manner that was completely contrary to the intention of  
12 the membership as expressed by the vote taken in October. Shortly thereafter,  
13 the Board's version of the ballot was sent out to members. It was prepared  
14 independently, excluding participation of two pro-pool Directors and one neutral  
15 director.  
16

17 32. The ballot phrased the members' decision in a way that suggested that  
18 members could vote for a less costly assessment to remove the pool; or a  
19 significantly higher assessment to restore and repair it. No middle ground or  
20 other options were provided.  
21

22 33. After the former Board of Directors submitted the aforementioned ballot to the  
23 association membership, they (the association members) voted 166 to 153 to  
24 authorize an estimated \$200,000 assessment to decommission and remove the  
25 pool rather than vote to assess \$650,000 to retain it. The manner in which this  
26 vote was handled allowed an easy opportunity for the former board members –  
27 or anyone else - to tamper with the votes; it did not provide an opportunity to  
28 vote "no" for either assessment amount; it did not provide specifics about  
29 financing possibilities and options, and in several areas was inconsistent with  
30 the club's governing documents. All of these issues could have been avoided  
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1 had the Board worked with the two appointed committees as directed by the  
2 October 2012 unanimous vote of the members.

3 34. The swimming pool is the only recreational facility of any significant value that is  
4 owned by the Admiral's Cove Beach Club. Its removal would be contrary to the  
5 purposes of the association and the membership's property rights and interest  
6 in the pool as a community asset. Additionally, the decision by the members to  
7 authorize funds to decommission the pool occurred by a "simple majority" of just  
8 13 votes even though a decision of this nature effectively altered the purposes  
9 and object of ACBC per its Articles and Bylaws. A change in the purpose or  
10 object of the association requires a 2/3 majority vote of the membership.

11 35. On December 30, 2013, this court entered a temporary injunction and order that  
12 precluded the Board of Directors of ACBC from taking any action to  
13 decommission or remove the swimming pool, from attempting to levy a special  
14 assessment to pay for the costs of decommissioning, and from taking action  
15 regarding the swimming pool that was contrary to the court's finding that the  
16 association's purpose included the operation and maintenance of the swimming  
17 pool facility.

18 36. On January 11, 2014, four members of the Board of Directors who had been  
19 involved in the decision to try and decommission the swimming pool were voted  
20 out of office by the members. Four new board members were chosen by the  
21 membership to replace those "anti-pool" directors. Since that time, the new  
22 board has attempted to develop a ballot to submit to members of ACBC that  
23 addresses the need to provide for maintenance and repair of the swimming pool  
24 in a manner this is consistent with the court's earlier rulings in this case and the  
25 Articles of Incorporation and Bylaws. However, without this court's final decision  
26 on my request for declaratory relief and a permanent injunction, the Board of  
27 Directors has been unable to confidently move forward with a proposed ballot  
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to submit to the membership for a vote on these issues.

37. The court should enter an order that permanently enjoins the ACBC board of directors, as presently constituted or as elected in the future, or the membership from taking any action or failing to take action, that would result in the removal, decommissioning, damage or destruction of the ACBC swimming pool unless the purpose of such removal was to make way for the construction or installation of a new pool facility. The only additional exception to an order of the nature I am requesting would be if two-thirds of the members affirmatively voted to change the purpose and "Object" of the Association and the purpose and object did not include the operation of a recreational and athletic facility for the benefit of the ACBC members. The option to change the Association's stated purpose from that which was originally established could only occur if the members and the board abide by the terms of Article V of the Articles of Incorporation and Article XVI, section 1, of the Bylaws.

38. Many of the persons who purchased lots within the plat received deeds conveying title to their lots with an express reference to the swimming pool and related facilities contained in the language of the deed. If the court does not permanently enjoin the board from taking action in the future that removes the swimming pool or that is designed to allow it to degrade, and the purposes and object of the Association remain the same, the Association could be subjected to lawsuits and title claims from persons who relied upon the existence of the pool and ACBC's purposes and object when purchasing their property. An example of the deed language used to convey lots within the Admiral's Cove Beach Club plat is set out below:

TOGETHER WITH one family membership in Admiral's Cove Beach

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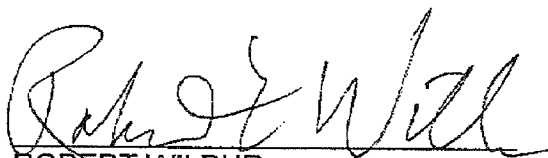
Club, Inc., a Washington non profit corporation, which will own and maintain certain beach rights, recreational areas, swimming pool, and other tracts, as shown on plat of Admiral's Cove, and the grantors warrant that all dues, assessments and charges for maintenance of and upkeep of said Beach Club properties and facilities to October 15, 1969, have been paid or will be paid by the Grantors.

This deed language was included in the deed provided to Gwyn Staton, a person who previously submitted a declaration in this case. The pertinent portion of the deed is attached as Exhibit A to the declaration of Gwyn Staton filed in this case on September 11, 2013.

39. The court's decision should also include an express finding and order that declares, as a matter of law, that so long as the association's purpose as set forth in the Articles of Incorporation and object as described in the Bylaws, remain the same and are not amended by a two-thirds vote according to the procedure in the Articles and Bylaws,, the swimming pool facility shall be properly maintained by defendant ACBC and its Board of Directors and not removed or decommissioned.

Dated this 13<sup>th</sup> day of January, 2015, at Coupeville

Washington.

  
ROBERT WILBUR

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF ISLAND

ROBERT WILBUR and DUSTIN  
FREDERICK,  
  
Plaintiffs,

NO. 13-2-00741-4

GR 17 DECLARATION

vs.

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,

vs.

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

UNDER PENALTY OF PERJURY AND PURSUANT TO THE LAWS OF THE  
STATE OF WASHINGTON, I CERTIFY THE FOLLOWING TO BE TRUE AND  
CORRECT:

I, Linda Williams, am assistant to Christon C. Skinner who is the attorney of  
record for the plaintiffs herein. I received a document entitled DECLARATION OF

1 ROBERT WILBUR IN SUPPORT OF AMENDED MOTION FOR SUMMARY  
2 JUDGMENT from Robert Wilbur by facsimile.

3 I further declare that prior to signing this affidavit, I did examine the document,  
4 determined that it consisted of twelve pages excluding the exhibit and that the  
5 document was complete and legible.  
6

7 DATED this 13th day of January, 2015, at Oak Harbor, Washington.  
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11 Linda Williams  
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