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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.

Case No.: 13-2-00741-4

DECLARATION OF

DECLARATION OF DELWIN R. JOHNSON IN SUPPORT
OF PETITION OF INTERVENTION

SUE CORLISS,

Intervenor,

v.

DUSTIN FREDRICK, ROBERT WILBUR,
ADMIRAL'S COVER 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
THAT THE FOLLOWING IS TRUE AND CORRECT:

- 1 1. My name is Delwin Johnson, I am over the age of 18 and make this declaration based on my
2 personal knowledge.
- 3 2. I am a former resident of the Admiral's Cove community and a former member of the
4 Admiral's Cove Beach Club (ACBC) Bylaws Committee and the Budget & Financial
5 Committees.
- 6 3. I was appointed to these committees in 2010 in recognition of my expertise and my
7 appointments were acknowledged to not be in conflict with the Bylaws of the ACBC. I
8 was not a resident at the time of my committee activities.
- 9 4. The Bylaws of the ACBC are subservient to, and supportive of, the Articles of
10 Incorporation (AOI) of the ACBC.
- 11 5. Both orally and in written documents, the current Board of Directors has attempted
12 to mislead the ACBC membership by omitting mention of the AOI or omitting specific
13 information contained within the AOI.
- 14 6. The AOI, Article V, ¶ 4 and ¶ 5, requires the management of the ACBC to 'otherwise deal in'
15 and 'otherwise dispose of' property and assets. Article VII requires a vote to revise the
16 purpose of the Corporation (ACBC) or the AOI itself. No such vote has been taken.
- 17 7. Excerpts from AOI:

18 *Article V*

19 *¶4. To purchase, take, receive, lease, take by gift, devise, or bequest, or otherwise acquire,
20 own, hold, improve, use and otherwise deal in and with real or personal property or any
21 interest therein wherever situated.*

*¶5. To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all
or any part of the property and assets.*

22 *Article VII*

23 *The purpose for which the corporation is created and/or these Articles of Incorporation may
24 be altered, modified, enlarged, or diminished by the vote of two-thirds (2/3rds) of all of the
25 members at a meeting duly called for such purpose, notice of which meeting shall be given in
26 the manner provided by law for the giving of notice for the meetings of members.*

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8. The current Board of Directors have caused numerous documents to have been submitted to the court as well as distributed to the membership, omitting the above excerpts. This continuing omission can only be described as deliberate as both the plaintiff, Robert Wilbur and the current Board of Directors attempt to show that the prior Board acted inappropriately. The omission continues in a letter posted to the general membership by President Ed Delahanty on the official ACBC website. (Attached as Attachment 1). The letter includes an 'opinion' letter from Mr. C. Nye whom Mr. Delahanty has identified as the ACBC lawyer. Mr. Nye has also omitted the above paragraphs in his opinion letter, either deliberately or through lack of adequate research.
9. Based upon the misleading information given to the membership by the current Board of Directors and the attorney representing the ACBC, many of the members are now of the opinion that the prior Board of Directors acted inappropriately.

Done on this day, 30 October, 2014, at Big Bear City, California.

Delwin R Johnson
Print Name



Signature

1 Attachment 1

2 <http://admiralscovebeachclub.org/f-a-q.html> (See link in FAQ ¶14)

3
4 Dear Mr. Delahanty:

5 As you requested, below is my response, as attorney for the ACBC Board of Directors, to the
6 email I received from one of the ACBC Members regarding the status of the Wilbur Lawsuit and
7 other questions regarding same. Please contact me if you need anything further.

8
9 Dear ACBC Member:

10 I am not sure where you are getting your information about this case but you seem to be
11 misinformed about how this litigation process works. As the defendant, we do not simply
12 "present our case" whenever we feel like it. The court sets the trial schedule for the case. And
13 litigation, as I am sure you are aware, takes a significant amount of time. Please be patient. I
14 assure you the parties to the case are striving toward bringing this case to a conclusion.

15 To answer your question, I do have the AOI and Bylaws. I invite you to please direct my attention
16 to the language in these documents that give the board the clear right to dispose of the pool if
17 the members vote to do so as you suggest. Because from my review of the documents, I do not
18 see any language in these documents giving the BOD the right or option of disposing of any
19 recreational property whether the members vote to do so or not. Judge Hancock clearly did not
20 see any such language either or he would not have voided the prior vote to decommission the
21 pool as being in violation of the powers granted by the governing documents.

22 I direct you to Article V, Sections 1 and 8 of the AOI, which states:

23 "The purposes, objects and powers proposed to be transacted, promoted, executed and carried
24 on by the corporation are as follows: 1. To construct, install, maintain and/or own and operate
25 athletic and recreational facilities of all types and kinds for the benefit of the members. . . 8. To
26 levy assessments against the owners of property in the Admiral's Cover development and/or
27 members of this Club on a pro rata basis for the maintenance and upkeep of this corporation's
28 properties and enforce collection of same.

The Bylaws also provide guidance on the powers and duties of the club.

Article II specifically states that the entire "OBJECT" of the club is to "provide and operate
recreational facilities for the benefit of the members." Further, Article III, "MEMBERSHIP",
Section 6, "Entitlement to Club Privileges" provides that "[p]rivileges of the Club, and the
property thereof, shall be available to all Active and Associate Members in good standing . . ." In
addition, Article VIII "POWERS AND DUTIES OF THE BOARD OF DIRECTORS", Section 2
"Maintenance and Operations of the Club Facilities" provides that it is duty of the board of
directors "[t]o cause the properties and facilities owned by the Club to be maintained and
operated in accordance with the appropriate County, State, and Federal laws and regulations,
the Articles of Incorporation, and these Bylaws."

From my review of these documents, I see nothing that gives the board of directors any right to
dispose of the pool. Even if there were such language in the governing documents that allowed
disposal of the pool, the board could not act on it today because of Judge Hancock's TRO which is
in place. I suggest you review the Findings of Fact, Conclusions of Law and Order of Judge
Hancock dated Dec. 30, 2013, which is available on your club website. In it you will find that
Judge Hancock completely voided the prior ballot vote to remove the pool as being contrary to

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1 the powers afforded by the bylaws and contrary to the motion passed in October, 2012. (See
2 conclusion of law #4).

3 He also ordered that the board may take no action to get rid of the pool. If fact, not only can
4 the board take no action to get rid of the pool, but the board must
5 maintain the pool and cannot even take any action that is inconsistent
6 with the motion passed by the members in October of 2012, the purpose of which was to explore
7 options for repair and funding to repair the pool.
8 So, to correct your statement, if the current board were to take any
9 steps to remove the pool as you seem to believe they can, they would
10 be violating Judge Hancock's Order. It simply is not an option at this
11 point.

12 Granted, this order is temporary in nature. A final ruling is needed to get an answer once and for
13 all. However, the TRO remains in effect until the court issues a final ruling, which is what we are
14 working toward. The case is proceeding and we hope to soon obtain a final ruling from Judge
15 Hancock that will once and for all answer the question of what options are available to the club
16 with respect to the pool. I completely disagree with you that the current board is overstepping its
17 bounds in this case. They are in fact complying with the court's order and acting within the scope
18 of their authority granted by the governing documents as they exist.

19 Lastly, I am unaware of any hearings being postponed last month or any attempts by any parties
20 to disqualify Judge Hancock. As I mentioned to you earlier, there was a pending motion for
21 summary judgment brought by the former directors that were named as defendants in the case.
22 That hearing did get postponed as a settlement of the claims against them were being worked
23 out. Once the settlement of those particular claims was finalized, they were dismissed from the
24 case, and their attorney withdrew the motion as being moot (the purpose of the motion was to
25 try and get them out of the case). I cannot speak to any motion for Hancock to recuse himself as I
26 have never seen it. Anyone who filed such a motion was obligated by the court rules to provide
27 copies of it to all parties in the case and if such a motion was filed, no copies were served, at
28 least upon me.

I hope this answers your questions.
Chris Nye