

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 JOHN H. DEEGAN SUPPORTING
MOTION FOR INJUNCTION PURSUANT TO RAP 8.3

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My name is JOHN H. DEEGAN and I am over the age of 18 and make this declaration based on my own personal knowledge.

1. I currently own one lot containing a single-family home and one additional undeveloped lot in Admiral's Cove Division 7.

I purchased my properties in the year 2006. I am a member of Admiral's Cove Beach Club (ACBC).

2. I oppose Judge Hancock's ruling in Mr. Wilbur's Case No.: 13-2-00741-4 in SUPERIOR COURT FOR THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF ISLAND that would result in a permanent injunction requiring the operation and maintenance of the ACBC pool because: 1) it nullifies my ACBC vote in 2013 to decommission the pool; and 2) it imposes a significant, unjustified, financial burden on me for a pool that is only available for use for three months out of the year and is only used by a very small number of ACBC members.

3. **Nullification of My Vote to Decommission the Pool**

A ballot was distributed to ACBC members in May of 2013 in order to decide the future of the ACBC pool. The ballot presented two options for members to vote on: (1) to decommission/remove the pool for a special assessment of \$200,000; or (2) to repair the pool and bring it up to code for a special assessment of \$650,000. Each member also received a detailed two-page document of "Frequently Asked Questions" with their ballot explaining the various options and issues related to the pool vote. This document discussed, among other things, the estimates for the repair or the removal of the pool, the various financing options, and ADA compliance. A true and correct copy of the Frequently Asked Questions document is attached as Exhibit A to this Declaration.

4. Prior to the aforementioned pool vote, the pool issue was a huge point of contention and had been debated and discussed within the Admiral's Cove community for many years. Any ACBC member with an interest in the pool had more than ample time and opportunity before the vote to be fully advised of every aspect of the pool dispute. Therefore, the ACBC members voted with their eyes wide open.

5. The result of the vote count was 166 ACBC members in favor of decommissioning/removing the pool, and 153 ACBC members in favor of repairing the pool and bringing it up to code. Thus, a majority of the 319 voting ACBC members chose to close the pool. I voted with the majority to close the pool. A substantial amount of the funds needed to decommission the pool were received by ACBC prior to Mr. Wilbur's referenced Case.

6. The ACBC Articles of Incorporation unquestionably allow for the disposal of ACBC assets. However, Judge Hancock ruled that the ACBC By-Laws take precedence over the ACBC Articles of Incorporation, and thereupon compelled the ACBC community to maintain a non-sustainable pool with limited ACBC member support.

7. After Judge Hancock's ruling, ACBC recently mailed another ballot seeking authorization to repair only the swimming pool and not the pool house. This new ballot sought approval of an assessment of \$1,000 per perk lot at an approximate cost of \$600,000. The ACBC community and I voted to remove the pool in 2013 and also had the option to repair the pool in the 2013 ballot.

8. The current ballot does not reflect the entire ACBC community's will because nearly half the community was denied a vote.

9. ACBC's History of Denied Use of ACBC's Facilities by Disabled Members Due to No ADA Compliance of Its Pool Facilities

The ACBC Pool facilities are not ADA compliant and ACBC's current pool restoration assessment for \$1,000 will not even come close to bringing the pool facilities into ADA compliance. Since 2006, I have faithfully paid my yearly dues, yet I have been and continue to be denied use of this pool while still being forced to pay yearly dues for a pool that I cannot even use. There are many in the community who are disabled and are still being denied this benefit of membership. This begs the question: Why should any of the disabled people in the ACBC community be forced to pay for a pool that we are being denied access to because of its noncompliance with the Americans with Disabilities Act?

10. Taxation Without Representation

After paying my dues to ACBC for all these years, I am continually denied the privilege of ever being able to enjoy the use of the pool facilities because of ACBC's failure to provide handicap access. Everyone has their limit. So, I have not paid this year's dues. Since I missed paying dues for one month, I was not allowed to vote on the ballot for the recent pool restoration assessment of \$1,000 per perk lot. Now I will be charged a \$1,000 assessment that I would have voted against had I been given the opportunity. I believe this is a case of taxation without representation and I am being forced to pay for pool facilities that I will never be able to use as long as they are not ADA compliant.

11. Unfair Financial Burden on Me and Other Retired Members

The ACBC intends to send out bills for \$1,000 per perk lot to pay for the restoration of the current pool based on the results of their most recent assessment ballot. The impact of this assessment, which assessment ACBC claims is based on Judge Hancock's ruling, will require me to pay \$1,000 per

lot for my two lots, resulting in a cost to me of \$2,000. I am informed that this will be just the first of several assessments needed to repair the pool and its facilities. This represents an extraordinary financial burden, particularly given that there has been no benefit to me or the other disabled members of the ACBC community. I am retired on a fixed income with significant medical expenses. The efforts to save this pool by the ACBC Board of Directors could force me into bankruptcy. If Judge Hancock's ruling stands upon Appeal, it's my understanding that I will have no choice but to pay whatever costs are incurred to refurbish and operate the pool in perpetuity. This could result in my being forced to sell my home of 10 years as well as my undeveloped lot, which I planned to bequest to my family in old age.

12. As if this were not enough, there are other major expenses soon to be incurred by ACBC, such as repairs needed to the Byrd Road hillside that is collapsing, as well as repairs needed to the tide gate in ACBC's lake. ACBC has other recreational equipment in need of repair too.

13. I respectfully request that the Appellate Court: 1) issue a Temporary Restraining Order to prevent the ACBC from issuing a bill for the \$1,000 pool assessment until there is a ruling on the Corliss appeal; and 2) rule that all votes of the 2013 Ballot to decommission the pool be reinstated.

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

Done on this 21st day of March, 2016, at Coupeville, Washington.

/s/ John H. Deegan
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