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SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF ISLAND

ROBERT WILBUR,
Plaintiff,

vs.
ADMIRAL'S COVE BEACH CLUB, a
Washington non-profit corporation,
Defendants.

NO. 13-2-00741-4
DEFENDANT'S RESPONSE TO
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

I. RELIEF REQUESTED

Because of the differences of opinion that exists among members of ACBC as to the issues before the Court herein, Defendant believes that officially it can take no position on plaintiff's motion for summary judgment, but does respectfully request that this Court issue a final ruling in this matter consistent with its interpretation of the Admiral's Cove Beach Club ("ACBC") governing documents and the pertinent facts so that ACBC can put the controversy of how to address its deteriorating swimming pool behind it once and for all.

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II. ADDITIONAL PERTINENT FACTS

As this Court is aware, it issued a ruling on plaintiff's motion for temporary injunction on December 30, 2013. The ruling nullified a prior ACBC vote to decommission the club swimming pool as being contrary to both the ACBC governing documents (including the Articles of Incorporation and Bylaws) and a motion passed by club members on October 27, 2012, directing the club to investigate and implement necessary repairs to the club swimming

DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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Sent on 10-9-14 via fax for filing in Island County Superior Court

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1 pool and evaluate financing options to fund such repairs.¹ The December 30, 2013 ruling also
2 enjoined the club from taking any steps toward decommissioning the pool or acting in any
3 manner inconsistent with the October 27, 2012 motion. The temporary injunction also
4 prohibits ACBC from failing to maintain the swimming pool or allowing it to fall further into
5 disrepair.

6 Plaintiff originally filed this case against ACBC and the seven individuals that were on
7 the ACBC Board of Directors at the time of the ballot to decommission the pool. Not long
8 after this Court's December 30, 2013 ruling, annual club elections resulted in five of the seven
9 directors named as defendants being replaced on the Board.² Subsequently, a settlement was
10 reached by the parties whereby plaintiff agreed to dismiss the individually named current and
11 former directors and proceed solely against ACBC.

12 Since that time, the current Board of Directors has attempted to move forward in
13 accordance with the terms of the temporary injunction issued by this Court on December 30,
14 2013 and in accordance with the stated plan and purpose of the October 27, 2012 motion to
15 prepare and place a ballot before club members that includes vetted options for implementing
16 necessary repairs to the pool and funding those repairs.³ For example, the current Board, in an
17 effort to comply with the Court's rulings to date, and with the help of a number of volunteers
18 from the community, made certain repairs and improvements to the pool facilities such that,
19 after properly securing appropriate permits from the relevant County and State authorities, the
20 pool was opened for use by members for approximately six weeks this past summer. This
21 happy event was well received by a great many members of the community and close to a 1000

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24 ¹ The ACBC Articles of Incorporation, Bylaws and Annual Meeting minutes dated October 27, 2012 are attached
hereto as Exhibits A, B and C to the Declaration of ACBC Board President, Ed Delahanty, respectively.

25 ² See Declaration of Ed Delahanty.

³ Id.

DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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1 swim visits occurred in the short time the pool was open. These efforts also furthered
2 compliance with the Court's ruling that the pool not be allowed to fall further into disrepair.

3 All of these efforts to comply with the Court's rulings to date have been continuously
4 opposed by a vocal faction of club members who are decidedly "anti-pool", or perhaps better
5 stated, "anti-paying for pool repairs." Among other things, these opponents insisted that the
6 Board had no authority to proceed with any repairs or maintenance on the basis that the Court's
7 ruling was only "temporary". They also have insisted that any ballot placed before the members
8 must include an option of decommissioning the pool or doing nothing with the pool. The
9 current Board believed that such positions violated the Court's rulings to date, but these
10 differences highlight the importance of obtaining a final ruling from the Court ending this
11 controversy once and for all.

12 These same individuals have vocally disagreed with the Board's interpretation of its
13 duties and responsibilities as provided in ACBC governing documents and the legal effect of
14 this Court's December 30, 2013 Temporary Restraining Order. Decorum at Board meetings
15 attended by these individuals has frequently deteriorated and the current Board has a reasonable
16 belief that if it attempts to move forward with ANY further action regarding the swimming
17 pool prior to this Court's issuance of a final ruling in this case, it will only invite further
18 litigation by unhappy members alleging that the Board is acting beyond the scope of its powers
19 granted by ACBC governing documents, thereby subjecting current Board members to
20 potential personal liability.

21 For this reason, ACBC respectfully defers to the final judgment of this Court and
22 requests that this Court issue a final declaratory ruling that clarifies the ACBC Board's duties
23 and responsibilities with respect to the ACBC swimming pool so that the Admiral's Cove
24 Beach Club community can attempt to move past this controversial matter once and for all.

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DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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III. EVIDENCE RELIED UPON

6 In addition to the contents of the court file, ACBC relies upon the Declaration of current
7 ACBC President, Ed Delahanty, and the exhibits attached thereto, which include the ACBC
8 Articles of Incorporation, ACBC Bylaws and minutes of the October 27, 2012 annual meeting.

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IV. LEGAL DISCUSSION

13 ACBC agrees with plaintiff that this case is ripe for resolution by declaratory judgment.
14 *DiNino v. State*, 102 Wn.2d 327, 330, 684 P.2d 1297 (1984). The controversy within the
15 Admiral's Cove Beach Club community about what actions toward the ACBC swimming pool
16 can be taken or are appropriate pursuant to ACBC governing documents has reached near-toxic
17 levels. The controversy is to the point that the current Board has a reasonable belief that any
18 action it takes on its own with respect to the pool will only incite additional discord within the
19 community and result in further litigation, all to the further detriment of everyone involved.

20 Accordingly, ACBC defers to the wisdom of this Court in objectively determining
21 ACBC's duties and responsibilities with respect to the ACBC swimming pool and respectfully
22 requests this Court resolve this matter once and for all.

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V. CONCLUSION

For the foregoing reasons, defendant Admiral's Cove Beach Club respectfully awaits
this Court's final ruling in this case so that it may act accordingly.

DATED this 9TH day of October, 2014.

REED McCLURE

By 

Christopher J. Nye, WSBA #29690
Attorney for Defendants

DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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CERTIFICATION OF SERVICE

I hereby certify that on October 9, 2014, copies of the following documents:

- 1. Defendant Admiral's Cove Beach Club's Response to Plaintiff's Motion for Summary Judgment;
- 2. Declaration of Ed Delahanty; and this
- 3. Certificate of Service.

were served on counsel at the following addresses and by the method(s) indicated below:

Christon C. Skinner
Law Offices of Christon C. Skinner, P.S.
791 SE Barrington Drive
Oak Harbor, WA 98277-3278
Atty for Plaintiffs

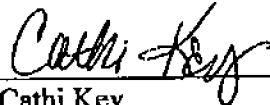
- U.S. Mail
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Vasudev N. Addanki
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701 Pike Street, Suite 1400
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*Atty for Defs. Admiral's Cove, Salls, Chamberlain,
Shaak & Peetz*

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dgreenberg@bpmlaw.com

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

Dated this 9th day of October, 2014, at Seattle, Washington.



Cathi Key