

SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF ISLAND


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

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

As with Plaintiff's Motion for Summary Judgment, Defendant takes no position on the merits of the legal arguments in Intervenor's Cross-Motion for Summary Judgment. However, while Defendant offers no legal argument for or against Intervenor's motion, Defendant wishes to supplement the factual record before the court with the Declaration of Ed Delahanty in Support of Defendant's Response to Intervenor's Cross Motion for Summary Judgment, which is incorporated by reference and filed herewith.

DATED this 2nd day of February, 2015.

REED McCLURE

By 
Christopher J. Nye, WSBA #29690
Attorney for Defendant

HONORABLE ALAN R. HANCOCK

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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,
Defendant.

NO. 13-2-00741-4
DECLARATION OF ED DELAHANTY
IN SUPPORT OF DEFENDANT'S
RESPONSE TO INTEVENOR'S CROSS
MOTION FOR SUMMARY
JUDGMENT

**UNDER PENALTY OF PERJURY AND PURSUANT TO THE LAWS OF THE
STATE OF WASHINGTON, I CERTIFY THAT THE FOLLOWING IS TRUE AND
CORRECT AND BASED ON PERSONAL KNOWLEDGE:**

1. My name is Ed Delahanty and I am the current President of the Board of Directors for Admiral's Cove Beach Club ("ACBC"). I am over the age of 18 and competent to testify to the matters herein.
2. Despite Intervenor's suggestions to the contrary, the Board of Directors has not colluded with "plaintiffs" regarding the substance of this suit. Current Director Dustin Frederick was originally a plaintiff in this case. He was subsequently elected to the Board of Directors after running on a "pro pool" agenda at the following annual meeting. After his election, he appropriately dropped out of this case as a plaintiff. Since that time, he has been excluded from all Executive Sessions of the Board dealing with the pool litigation. He has also been excluded from all

DECLARATION OF ED DELAHANTY IN SUPPORT OF DEFENDANT'S RESPONSE
TO INTEVENOR'S CROSS MOTION FOR SUMMARY JUDGMENT - 1

REED McCLURE
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1 communications with the club's legal counsel regarding the substance of this case.
2 Since dropping out of this case, he has participated in public discussion regarding
3 the pool as is his right as a member.

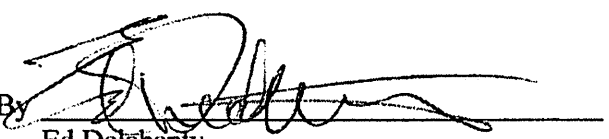
- 4 3. Regarding Intervenor's contention that necessary pool repairs will cause a financial
5 hardship for club members, the Board of Directors is sensitive to the fact that the
6 necessary repairs will cost approximately \$650,000. It is anticipated that this would
7 result in a special assessment of approximately \$1,700 to each member. However,
8 if the club goes forward with necessary repairs following the conclusion of this case,
9 the Board intends to offer members various financial options for satisfying this
10 assessment, including making monthly payments and stretching them out as long as
11 48 months. A 48 month payment plan would result in monthly costs of
12 approximately \$35. The Board also intends to afford members the opportunity to
13 document financial hardship and be given consideration by ACBC's Board, based
14 on information provided confidentially to ACBC's accounting service.
- 15 4. Intervenor relies heavily on data from the Long Range Planning Survey that
16 indicated 49.3% of members report never using the pool. Respondents to that
17 survey only comprised about 10% of the club members.
- 18 5. Intervenor, relying on the Declaration of Michael King, argues that summary
19 judgment in plaintiff's favor would prevent ACBC members from implementing the
20 approved motion regarding the Alternative Visions committee. This is untrue. The
21 motion simply provides for the evaluation of potential alternative uses for the land
22 upon which the pool sits. The motion does not direct that any alternate uses be
23 implemented. It should also be noted that implementation of alternate uses for the
24 land would be contrary to the October 27, 2012 motion passed by the members
25 directing the club to investigate and implement necessary pool repairs.

- 1 6. In her declaration, Barbara Nichols states that the Board announced that it would
2 “send out an assessment of \$1,700 without a vote of the members.” This statement
3 is untrue. After the conclusion of this case, the Board hopes to propose a special
4 assessment with various payment options as discussed above and put it to a vote by
5 the members.
- 6 7. Intervenor has alleged that the Board has overruled a member vote to keep the dues
7 the same for 2014 as they were for 2013. (See Declarations of Charles Bauer and
8 Robert Pectz.) The amount of the dues increase was less than 10% of the previous
9 year’s dues and therefore no ballot or member approval is necessary under Art. VIII,
10 Sec. 7 of the ACBC bylaws.
- 11 8. Intervenor and her supporters argue in their declarations that the pool is a health and
12 safety hazard. To their chagrin, the club made all appropriate and necessary repairs
13 to be able to operate the pool under a limited use permit granted by applicable state
14 and county authorities in the summer of 2014. According to state and county
15 authorities, however, the pool cannot re-open until such time that all necessary
16 repairs are made. Assuming such repairs are implemented, the intention of the club
17 is to have the pool open for member use every year between Memorial Day
18 weekend and Labor Day weekend.
- 19 9. In her declaration, Karen Shaak states that “the pool facility is totally devalued as
20 was professionally assessed.” (Shaak Decl., par. 8). She cites to no assessment
21 which is expected because the Board is not aware of any professional assessment of
22 the pool’s value. She next states that the pool is “currently listed as a liability”
23 however she cited to no document or record. Again, the Board is not aware of any
24 record or document that supports this. She claims it will cost nearly \$1 million to
25 repair the pool when she and other members are aware the anticipated expenses to
 make necessary repairs is \$650,000 based on estimates prepared by a professional

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architect and pool company. She claims the pool was assessed to have no value as an asset to the club and that this valuation assessment was a requirement of the motion passed at the 2012 annual meeting (of Oct 27, 2012). Again, she points to no document to support this statement and the Board is unaware of any such documents assessing the value of the pool. However, the minutes of the 2012 Annual Meeting, which are attached as Ex. C to my prior declaration in response to plaintiff's motion for summary judgment, make no mention of any valuation assessment or other similar items.

DATED this 2nd day of FEBRUARY, 2015.

By 
Ed Delahanty

DECLARATION OF ED DELAHANTY IN SUPPORT OF DEFENDANT'S RESPONSE TO INTEVENOR'S CROSS MOTION FOR SUMMARY JUDGMENT - 4

HONORABLE ALAN R. HANCOCK

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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,
Defendant.

NO. 13-2-00741-4
AFFIDAVIT PURSUANT TO
GR 17(A)(2)

I, Ed Delahanty, declare as follows

1. I am over the age of 18 and competent to testify as to the following matters.

2. I submit this affidavit pursuant to GR 17(a)(2) as recipient of the following documents received via email for filing with the Court in this matter:

a. Defendant's Response to Intervenor's Cross Motion for Summary Judgment.

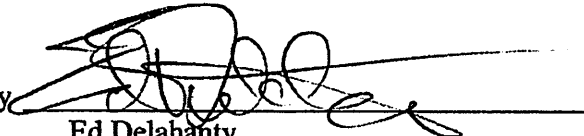
3. I have examined the documents listed above. "Defendant's Response to Intervenor's Cross Motion for Summary Judgment" consists of one (1) page, including the signature page. It is complete and legible.

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

DATED this 2nd day of February, 2015.

By 
Ed Delahanty

THE HONORABLE ALAN R. HANCOCK

SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF ISLAND

ROBERT WILBUR and DUSTIN
FREDERICK,

Plaintiffs,

vs.

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

Defendants.

NO. 13-2-00741-4

CERTIFICATE OF SERVICE

CERTIFICATION OF SERVICE

I hereby certify that February 2, 2015, copies of the following documents:

1. Defendant's Response to Intervenor's Cross Motion for Summary Judgment;
2. Declaration of Ed Delahanty;
3. GR 17 Affidavit; and this
4. 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

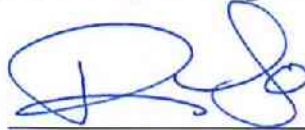
- U.S. Mail
- Fax
- Legal messenger
- Email: chris@skinnerlaw.net

1 Jay Carlson
2 Carlson Legal
3 315 Fifth Avenue South , Suite 860
4 Seattle, WA 98104
5 *Atty for Intervenor Sue Corliss*

U.S. Mail
 Fax
 Legal messenger
 Email: jaycarlson.legal@gmail.com
joseph.martinez@cgilaw.com

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

8 Dated this 2nd day of February, 2015, at Seattle, Washington.

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11 _____
12 Rebecca C. Lewis
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