

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF ISLAND

ROBERT WILBUR and DUSTIN
FREDERICK,

Plaintiffs,

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.

NO. 13-2-00741-4

DUSTIN FREDERICK'S
DECLARATION IN REPLY TO
RESPONSE OF DEFENDANTS
RE: TEMPORARY
INJUNCTION

UNDER PENALTY OF PERJURY AND PURSUANT TO THE LAWS OF THE
STATE OF WASHINGTON, I CERTIFY THAT THE FOLLOWING IS TRUE AND
CORRECT TO THE BEST OF MY KNOWLEDGE:

1. My name is Dustin Frederick. I am over the age of eighteen years and competent to be a witness. This declaration is submitted in REPLY to the responsive material provided by the Defendants to the court in connection with the Plaintiffs' request to have the temporary restraining order remain in effect as a temporary injunction pending final disposition of this proceeding. The information contained in this declaration is based on my personal knowledge of the facts.
2. I am a member of Admiral's Cove Beach Club and one of the Plaintiffs in this case. I reviewed the Defendants' response to the Plaintiffs' motion and observed

1 that there are several inaccurate and misleading statements contained within
2 tharesponse.

- 3 3. The temporary restraining order previously entered should be converted to a
4 temporary injunction while this lawsuit is pending resolution. To do otherwise
5 will create irreparable harm for the Plaintiffs and those association members
6 who desire to have the issue of the association's swimming pool's retention and
7 repair fairly submitted to the members for consideration.
- 8
- 9 4. I have been the Business Manager for a public employee labor union for 37
10 years, am a certified mediator and possess an MPA. I was previously the
11 president of the Admiral's Cove Beach Club.
- 12 5. The Defendants attempt to characterize their activity as being nothing more
13 than an effort to carry out their duties as required by the bylaws of the
14 association. This is not accurate. The Defendant board members, or a majority
15 of them, have systematically attempted to avoid implementing the provisions of
16 a membership resolution that was passed unanimously by the members at an
17 annual meeting held on October 27, 2012. At this meeting, there was clearly a
18 quorum of members present and we had the largest annual meeting on record.
19 The members' resolution about how to address the swimming pool issue was
20 very clear but the defendant board members are refusing or unwilling to comply
21 with its terms. The defendant board members actions and conduct since that
22 meeting are the primary reason that Mr. Wilbur and I elected to file this suit and
23 request the court's intervention.
- 24
- 25 6. After the 2013 annual meeting, the Board committed several errors and
26 omissions. Specifically, the Board failed to adhere to the timeline outlined in the
27 motion; failed to utilize a non-resident facilitator to create an unbiased
28 implementation of the resolution's directives; failed to charge the committees
29 with the three tasks outlined in the Motion and failed to investigate and develop
30 payment options that would have reduced the immediate burden of special
31 assessments on members. See Exhibit 1.
- 32

- 1 7. There was unanimous agreement from the members present at the October
2 27, 2012 annual meeting about how the motion would be worded and the
3 motion did not include any mention of a “no pool” option or assessment –
4 something that ended up on the ballot that was engineered by a majority of the
5 defendant board members. Despite that agreement among the members, Jean
6 Salls, ACBC President advised attendees at the annual meeting that there
7 would be a “no pool” option on the ballot regardless of the members’ specifically
8 stated intentions and the approved Motion. See Exhibit 1.
9
- 10 8. Even though several openly “pro-pool” ACBC members volunteered for the
11 committees listed in the member Motion, defendant Jean Salls refused to
12 assign any pro-pool members as chairpersons of the Long Range Planning
13 Committee, the Pool Maintenance Committee or the budget committee. Thses
14 were the three committees assigned by the members to collaborate and draft
15 the proposed wording for the ballot. See Exhibit 1-A.
16
- 17 9. Cathie Harrison, designated by Jean Salls as the Chair of the Pool Maintenance
18 Committee – merely announced meeting dates and meeting times and then
19 proceeded with the meetings - rather than making the usual and customary
20 effort to coordinate scheduling with all committee members, particularly those
21 living off island. This failure to follow prior practice and procedure resulted in
22 several members being unable to attend the committee meetings despite a
23 strong desire to participate.
24
- 25 10. While there were several committee meetings related to the swimming pool
26 resolution, albeit with sparse attendance, the committees, directed by the
27 chairs, ignored any discussion about how to fund the pool renovation, a specific
28 task delegated to the committees in the Motion. See Exhibit 2 and Exhibit 3.
29 Instead, Ms. Sall’s chosen chairpersons focused their energy on comparing the
30 costs of decommissioning the pool to the costs of a total renovation for cash.
31
- 32 11. I attempted to generate Board support for several different funding options, first
via a fundraiser called “Buy-a-Brick” campaign. I was even designated by the
Board to be in charge of that effort. I contacted the Whidbey Island newspaper

1 to generate interest in this fundraising effort. Rather than support me in that
2 endeavor, the Board's response was to criticize the contents of the newspaper
3 article and make false statements to the effect that I lied about the amount of
4 funds pledged. In addition, certain defendant Board members, specifically Dan
5 Jones and Jean Salls and Maria Chamberlain, accused me of illegally collecting
6 money and holding it. They made these unfounded allegations even though I
7 sent e-mails to the Board explaining that no money had been collected. I
8 merely contacted people and asked if they would pledge and how much so we
9 could defray the amount necessary for the community to pay for the
10 rehabilitation. See Exhibit 4 and Exhibit 5.

11
12 12. Despite my emails explaining that no money had been collected, the majority of
13 the Board voted to spend association funds on a legal opinion regarding the
14 validity of my charitable efforts, alleging I had done something illegal although I
15 was previously authorized to solicit funds. See Exhibits 1 , Exhibit 4 and Exhibit
16 5. It was apparent to me that the defendant board members who initiated this
17 action were intent on minimizing my influence with our membership.
18

19 13. Consistent with the October 27, 2012 membership motion and my designation
20 as the point person for fundraising and in my role as a Long Range Planning
21 committee member, I contacted Whidbey Island bank (Whidbey Island Bank) to
22 inquire about the possibility of a mortgage of the community property to fund the
23 pool renovation. I notified the Board that I had contacted Whidbey Island Bank
24 and asked the Board to send financial data to the bank. See Exhibit 6.
25

26 14. The Board responded to my statements about this investigation by refusing to
27 even consider the mortgage option. I again asked the Board to send ACBC
28 financials to bank, as requested by the bank and the Board refused.
29

30 15. Pursuant to ACBC Bylaws I requested that President Salls schedule a "special"
31 membership meeting to discuss the mortgage option as a means of funding the
32 repair and renovation of the swimming pool (instead of a member assessment).
After some discussion regarding the challenging logistics of a "special"
membership meeting, it was agreed that a "committee" meeting would be

1 scheduled. Defendant, Dan Jones was designated by Defendant Jean Salls to
2 chair the meeting. From the onset of the meeting, Mr. Jones was
3 argumentative and hostile toward me and this idea and contended that it was
4 too late in the process to accept any new input about financing the pool
5 improvements. Mr. Jones refused to authorize me to go to the bank with other
6 Board and/or committee members to obtain first hand information regarding the
7 viability of a mortgage loan to fund pool repairs. Several ACBC members
8 witnessed Mr. Jones conduct in this regard including Bob Wilbur and Fred
9 Salmon. I wanted to personally go to the bank with the board members
10 because I had knowledge that the board was intentionally downplaying the
11 viability of a mortgage as a funding option. See Exhibits 2, 6, 7, 8, and 9.

12
13 16. Several days after the "special" committee meeting Chaired by Dan Jones and
14 described above, the Board relented and agreed to meet with representatives
15 from Whidbey Island Bank to get "accurate" information regarding the mortgage
16 funding option. A meeting date and time was sent out in an email from
17 President Jean Salls. See Exhibit 10.

18
19 17. I could not attend the meeting at the specified time and asked Jean Salls, Board
20 President, to reschedule the meeting with Whidbey Island Bank. Board
21 Secretary Karen Shaak, who volunteered to go to the bank, also said she was
22 not available and I understood the meeting would be rescheduled. Instead of
23 rescheduling the meeting so I could attend, three Board members, Jean Salls,
24 Maria Chamberlain and Karen Shaak with the Whidbey Island Bank
25 representative without me. After their meeting with the bank representative, the
26 board members who attended provided no report regarding the outcome of the
27 meeting. I found out about the meeting by talking with a loan officer from
28 Whidbey Island Bank. The three Board members who met with the Whidbey
29 Island Bank loan officer told that individual not to talk with anyone but Board
30 members regarding the possibility of obtaining a mortgage. See Exhibits 9, 10
31 11 and 12. I am not sure why the defendant board members felt compelled to
32 keep these discussions a secret but their actions appeared dishonest and not

1 consistent with the interests of the association. Particularly if the bank was
2 willing to offer a financing package that would have allowed the association to
3 borrow sufficient funds to repair and refurbish the pool without the need to
4 impose a substantial assessment.

5
6 18. Prior to the vote on the pool assessment, I asked at a Board meeting if the
7 ballots would have voter signatures and was told "no", it would be a "secret"
8 ballot. The Board was fully aware this could be a problem with ballot tampering
9 due to similar complaints from a previous ballot process on a prior assessment
10 vote. See Exhibit 13.

11
12 19. Pursuant to the wording of the membership motion at the October 27, 2012
13 annual meeting, the Pool Maintenance Committee members were to draft the
14 language of the ballot related to the pool assessment. Notwithstanding that
15 directive by the membership, the final ballot wording was actually formulated by
16 only four Board members, each of whom are defendants in this case. In
17 addition, the ballot was then sent out in a hurried fashion. I believe this was
18 done to make it difficult for other Board members or any Committee members to
19 make editing changes that would have altered the bias of the ballot against
20 renovating and retaining the pool.

21
22 20. Notwithstanding a requirement in the bylaws that members be given a full thirty
23 days to make payment of assessments, the special assessment to fund
24 decommissioning of the swimming pool was actually sent out on August 14th,
25 2013, with a payment due date of August 30th, 2013. Had the defendant board
26 members adhered to the bylaws, members would have been advised that the
27 special assessment was not due until September 13, 2013. Since the board
28 was restrained from attempting to enforce any assessment as of September 11,
29 2013, no member could or should be characterized by the Board of Directors as
30 a member "not in good standing" for refusing to pay the special assessment that
31 did not come due until September 12. This issue is important for several
32 reasons, including the court's determination of whether the board should be
held in contempt for attempting to alter the effect of the annual meeting and not

1 permit persons who have not paid the assessment to vote or hold board
2 positions because they have not paid the special assessment that I believe was
3 improperly assessed.

4 21. The Board inflated the cost of the pool renovation by adding an arbitrary 30%
5 contingency factor to the building renovation and pool renovation projected
6 expenses, notwithstanding the fact that the Pool estimate already had a 10%
7 contingency factor in the \$200,000.00 bid. The pool vendors who bid the pool a
8 couple years ago confirmed their bids would not be increased and they were
9 still willing to do the restoration of approximately \$175,000 to 180,000.

10
11 22. In addition, the Board added an unnecessary and unreasonable "reserve" fund
12 requirement to the renovation bid to make it as high as possible in what I
13 believe was an effort to insure the pool's defeat.

14
15 23. The Board refused to consider any options to the renovation process such as
16 adding Americans with Disabilities Act (ADA) changes in a staged manner or
17 repair the pool first and the pool building thereafter.

18 24. The board refused to consider changing the pool to "limited" use to cut costs of
19 operation by eliminating the need for lifeguards - a major operating cost for the
20 pool.

21
22 25. When I was President of ACBC, I proposed and the Board concurred, to raise
23 the dues by the 10% amount allowed under the bylaws without the necessity of
24 a membership vote. A 10% increase was programmed into the budget for
25 2012, but when the new Board took over and Dan Jones was Treasurer, the
26 Board only increased the budget by 1.63% instead of 10%. They did this
27 reduced increase even though they were fully aware of the need for money to
28 renovate and repair the swimming pool. The defendant board members
29 criticized prior Boards for not taking action to fix the pool – while at the same
30 time they refused to raise dues as approved by members via the budget.

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32 26. Some of the Defendant Board members posted anti-pool information on
ACBC's official website, and refused to post pro-pool information. After

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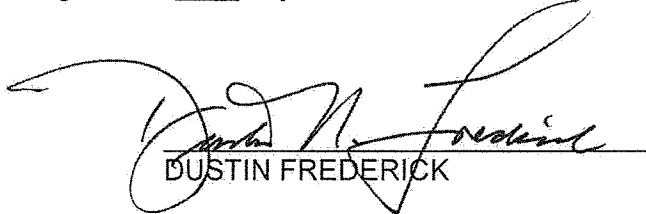
receiving complaints about this biased treatment, Defendants Jean and Karen eventually relented and posted my "pro-pool information." See Exhibit 14.

The Board proposed Changes to the Bylaws to eliminate and restrict participation by members who do not agree with their anti-pool position e.g. the new provision regarding when a Board member is removed by action of the Board i.e. Article VI Section 6 REMOVAL. See Exhibit 16.

27. In addition, the Board is currently involved in proposing changes to Bylaws to extend terms of current Directors in order to "control" the Board until the pool can be decommissioned.

The Temporary Restraining Order entered in this case should be extended to a temporary injunction. The defendant board members have acted in a manner that is contrary to the bylaws and the express provisions of the members' resolution passed on October 27, 2013. In order to prevent the Board from carrying out their improper objective of decommissioning the ACBC swimming pool before the validity of the prior vote on special assessments can be heard by the court, the restraints should remain in place as requested. In addition, the Board of Directors should be ordered to immediately schedule and conduct an annual membership meeting and hold an election for the open director positions. The Board's effort to prevent an election from occurring is contrary to law and is a clear effort to step around this court's effort to maintain the status quo while a final decision on the legal issues in this case is pending.

Dated at Oak Harbor, Washington this 25th day of November, 2013.


DUSTIN FREDERICK

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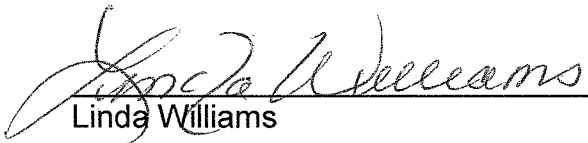
GR 17 DECLARATION

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 DUSTIN FREDERICK'S
DECLARATION IN REPLY TO RESPONSE OF DEFENDANTS RE: TEMPORARY
INJUNCTION from Dustin Frederick by electronic transmission.

I further declare that prior to signing this affidavit, I did examine the document,
determined that it consisted of eight pages excluding the exhibits and that the
document was complete and legible.

DATED this 25th day of November, 2013, at Oak Harbor, Washington.


Linda Williams