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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

MOTION OF ADMIRAL'S COVE BEACH
CLUB MEMBER SUSAN CORLISS TO
INTERVENE PURSUANT TO
WASHINGTON CIVIL RULE 24

SUE CORLISS,

Intervenor,

v.

DUSTIN FREDRICK, ROBERT WILBUR,
ADMIRAL'S COVE BEACH CLUB, a
Washington non-profit corporation, and its
BOARD OF DIRECTORS.

Defendants.

I. SUMMARY AND LEGAL AUTHORITY

Like the plaintiff in this case, Susan Corliss is a property owner in the
Admiral's Cove development. Like the plaintiff, by virtue of her lot ownership she

1 is also a Member of the Admiral’s Cove Beach Club. Therefore, Ms. Corliss has the
2 exact same basis for standing as does the current plaintiff.

3 Ms. Corliss is intervening now because the plaintiff is seeking a Permanent
4 Injunction from this Court, on Summary Judgment, that will personally cost her,
5 and approximately 600 other property owners in the Cove, thousands of dollars.
6 Because the current defendant, the Admiral’s Cove Beach Club, has abandoned its
7 opposition to plaintiff’s claims, there is currently no party in this suit that is
8 defending the claims or adequately representing Ms. Corliss’ interests. Indeed, the
9 hundreds of Club Members who oppose Plaintiff’s request -- and who voted as a
10 majority against it -- are currently without any representation or voice in this case.

11 In these circumstances, Intervention is mandatory. CR 24(a) provides for
12 intervention “of Right” when “the applicant claims an interest relating to the
13 property or transaction which is the subject of the action and he is so situated that
14 the disposition of the action may as a practical matter impair or impede his ability
15 to protect that interest[.]” CR 24. Here, as an owner and Member of the Club, Ms.
16 Corliss has the exact same interest and standing in the case as does the plaintiff
17 Mr. Wilbur. She has a direct financial stake in the outcome. Indeed, if granted the
18 Permanent Injunction will have a substantial financial impact on all 600 of the
19 property owners/Members of the Cove. They deserve to be heard. And because the
20 Cove has, as defendant, abandoned the defense of this case (as discussed below),
21 there is no present party who is “adequately representing” the interests of Ms.
22 Corliss or the hundreds of like-minded Cove Members. Washington CR 24(a).

23 This Intervention request is timely. Under Washington law, when a request
24 to Intervene is filed before trial, it is, by definition, timely. As the Court of Appeals
25 held: “Here in Washington, a motion to intervene is timely if it is filed before the
26 commencement of the trial.” See Columbia Gorge Audobon Society v. Klickitat, 98
27 Wn.App. 618, 623, 989 P.2d 1260 (Wn.App. 1999) (citing American Discount Corp. v.
28 Saratoga West, Inc., 81 Wash.2d 34, 43, 499 P.2d 869 (1972)). **“This has always**

1 **been the rule here.”** *Id.*, (citing *Colburn v. Spokane City Club*, 20 Wash.2d 412,
2 415-16, 147 P.2d 504 (1944); *Hight v. Batley*, 32 Wash. 165, 166, 72 P. 1034 (1903)
3 (intervention not timely after appeal is filed)) (emphasis added).

4 While the above-cited caselaw is clear, there is also good cause why
5 Intervention has been requested now. The current defendant, the Admiral’s Cove
6 Beach Club, recently decided to drop its opposition to plaintiff’s claims. It did so
7 without providing notice of this change to its Members, such as Ms. Corliss. In it’s
8 most recent filing, the Club informed the Court that it does not oppose the Motion
9 for Summary Judgment and entry of a Permanent Injunction. See Defendant’s
10 Response to Motion for Summary Judgment. This change in litigation position has
11 prompted Ms. Corliss, and numerous other Club members who have prepared
12 Summary Judgment declarations in this case, to take action now to respond to the
13 pending Summary Judgment. So, Intervention is timely pursuant to the caselaw,
14 but there is also good cause why Intervention is sought now.

15 Lastly, Intervention is mandated here because the plaintiff is seeking a
16 Summary Judgment on his Declaratory Judgment claims. Washington’s Uniform
17 Declaratory Judgments Act makes clear that any party who claims an interest in a
18 Declaratory Judgment action **must** be made a party. “When declaratory relief is
19 sought, all persons shall be made parties who have or claim any interest which
20 would be affected by the declaration, and no declaration shall prejudice the rights of
21 persons not parties to the proceeding.” RCW 7.24.110. Therefore, under the Act
22 this matter cannot proceed to a Declaratory Judgment without the presence of all
23 parties who claim an interest. No Declaratory ruling can “prejudice the rights of
24 persons not parties[.]” RCW 7.24.110.

25 Because the statutes and case law on Intervention are so clear, the
26 undersigned counsel sought agreement of the other parties to stipulate to
27 Intervention. Counsel for the plaintiff was unwilling to so stipulate, which
28 necessitated the present Motion.

1 the wishes of the majority of Club Members, who have voted pursuant to the
2 Bylaws to close the pool. If successful, this suit will result in large assessments
3 being imposed upon all Members, including Ms. Corliss, against their will and
4 without Member approval for such assessments as required by Club Bylaws. Id., ¶
5 7. This will disenfranchise the Members and directly violate Club bylaws.

6 The uncovered, outdoor pool was built in the 1960s. It has never been
7 refurbished. It is in a dramatic state of disrepair. As a result, it can only be used
8 during a very small portion of the year. According to the approved Board of
9 Director’s meeting minutes from September 20, 2014, in 2014 the pool was open on
10 only approximately 20 days. Many Members, including Ms. Corliss, never use the
11 pool. In a June, 2012 Long Range Planning Survey, 49.3% of Club Members
12 disclosed that they *never* use the pool, with another 37.7% reporting that they only
13 used it “occasionally” in the summer, meaning less than once weekly. Only a very
14 small minority of Members reported using the pool on a regular basis. Id., ¶ 8.

15 A recent inspection and architectural review of the pool facility disclosed
16 widespread problems with the pool, and recommended that it must be significantly
17 rebuilt, with all major systems replaced. The estimated cost of these and associated
18 repairs to pool facilities was \$650,000. Id., ¶ 9.

19 As the Court may recall, in May of 2013, pursuant to Club Bylaws, a ballot
20 was circulated to Club Members to determine the future of the pool. Two options
21 were provided for Members to vote on: (1) a special assessment of \$200,000 to
22 decommission/remove the pool, or (2) a special assessment of \$650,000 to repair the
23 pool and bring it up to standards. Id., ¶ 10. With their ballot, each Member also
24 received a two page “Frequently Asked Questions” document. This document
25 explained in detail the various options and issues related to the pool vote. A true
26 and correct copy of this Frequently Asked Questions document is attached as
27 Exhibit A to this Declaration. Among other things, this document discussed the
28 estimates for repair or removal of the pool, the various financing options, and ADA

1 compliance. Id., ¶ 11.

2 Prior to the vote, the pool issue had been debated and discussed within the
3 Cove community for many years. Any Club Member with an interest in the pool
4 had ample time and opportunity, before the vote, to be fully advised about every
5 part of the pool dispute. In other words, the Members voted with their eyes wide
6 open and with full awareness of what they were voting on. Id., ¶ 12.

7 The result of the vote was 166 Members in favor of closing the pool, 153 in
8 favor of an assessment to keep the pool open. So a majority of the 319 voting
9 Members chose to close the pool. Ms. Corliss voted with the majority to close the
10 pool. Id., ¶ 13.

11 Mr. Wilbur is now seeking to overturn the majority will of Club Members and
12 force the Club to keep the pool open. This will result in the imposition of very large
13 special assessments against each Club Member, without their consent as required
14 by Club Bylaws. These assessments will have a significant financial impact on Ms.
15 Corliss and on many other similarly situated Members who are on fixed incomes
16 and who have limited assets. Id., ¶ 14.

17 Previously in this suit, the Club, as the defendant, actively opposed Mr.
18 Wilbur's claims. For example, the Club actively opposed Mr. Wilbur's prior request
19 for a Temporary Restraining Order. But more recently, the attitude of Club Officers
20 has apparently changed. As a result, the Club is no longer opposing Mr. Wilbur.
21 The Club has apparently decided to abandon its defense of his present Motion. Id.,
22 ¶ 15.

23 This recent change in Club's the approach has left Members such as Ms.
24 Corliss with no representation in this lawsuit. That is why she is intervening now.
25 These facts only recently came to light. In late-September, 2014, Mr. Wilbur filed a
26 Motion for Summary Judgment with this Court. In this Motion, he seeks to end
27 this case and acquire a Permanent Injunction against the Club. The wide-ranging
28 injunction he seeks goes well beyond anything that has been requested in this case

1 before. Id., ¶¶ 16-17.

2 Mr. Wilbur now asks the Court to “affirmatively require and direct” the Club
3 to conduct significant repairs to the pool. Motion for Summary Judgment at 2. He
4 asks the Court to order the Club to “implement an annual budget that provides for
5 sufficient funds, from dues and assessments,” to effectuate these repairs and
6 maintenance. Id. In other words, Mr. Wilbur is asking the Court to take over Club
7 affairs as it regards the repair, maintenance, budgeting, and assessments against
8 Members related to the pool. He does this without even estimating in his Motion
9 how much this will cost the 600 Club Members who would be subject to this Order.
10 Corliss Decl., ¶ 18.

11 In Ms. Corliss’ opinion, the requested Injunction would violate the Club
12 Bylaws in numerous respects. It would eliminate Club control over its own facilities
13 and property. It would eliminate the entitlement of all Club Members to vote on
14 budgetary and assessment issues. It would overturn the vote of Club Members,
15 pursuant to the Bylaws, regarding the disposition of the pool. And most
16 significantly, it would impose large financial assessments against all 600 Club
17 Members, who will have no say in the matter or ability to vote. Id., ¶ 19.

18 While the Club previously opposed Mr. Wilbur in this case, the Club has
19 given up that opposition. In response to Wilbur’s Motion, the Club stated that
20 “officially it can take no position on plaintiff’s motion for summary judgment.”
21 Defendant’s Response to Summary Judgment at 1. Throwing up its hands, the Club
22 actually asks for a “final declaratory ruling that clarifies the ACBC Board’s
23 duties...so that the Admiral’s Cove Beach Club can attempt to move past this
24 controversial matter once and for all.” Id. at 3. In other words, the defendant is
25 **agreeing** to the plaintiff’s request for a Permanent Injunction that will end this
26 case now. Id., ¶ 20.

27 This is a substantial change in the Club’s approach. Ms. Corliss was not
28 notified that the Club had decided to drop opposition to the lawsuit. Nor was she

1 aware of any notice that Club officials provided to Members about the change in
2 litigation strategy. Ms. Corliss only learned of these facts very recently. This is
3 why she intervening now. *Id.*, ¶¶ 21-22. There is no one presently representing her
4 interests, or the interests of hundreds of like-minded Club Members. *Id.*, ¶ 22.

5 The hundreds of Club Members who oppose Mr. Wilbur’s demands deserve a
6 voice in this case. Because Ms. Corliss has a direct financial stake in the case
7 outcome, and because her interests are not adequately represented, she requests
8 that this Court grant her timely request to intervene. *Id.*, ¶ 22.¹

9 III. CONCLUSION

10 There can be no argument that Intervention is not sought timely.
11 Washington caselaw is absolutely clear that Intervention sought before trial is
12 timely, by definition. Furthermore, the interest of Ms. Corliss in the outcome of this
13 litigation is clear. She, and 600 other Members of the Cove, face significant
14 financial assessments, imposed outside of the processes of the Club bylaws, if
15 plaintiff’s current Motion for a Permanent Injunction were granted. The hundreds
16 of Members who oppose plaintiff’s request, and who previously voted pursuant to
17 their own bylaws in opposition, deserve to be heard in this case. Since the Cove
18 has decided to abandon its defense, this can only be accomplished by allowing
19 Intervention.

20 Respectfully Submitted

21
22 _____
23 Jay Carlson, WSBA 30411
24 Attorney for Intervenor Susan Corliss

25
26 _____
27 ¹ Ms. Corliss intends to file an opposition to the present Summary Judgment motion and to appear,
28 through counsel, at the Summary Judgment hearing on November 17. Counsel for the other parties
has been notified of this. Corliss Decl., ¶ 23.