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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 INTERVENOR SUE
CORLISS TO COMPEL DISCOVERY
FROM PLAINTIFF

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

Intervenor Sue Corliss asks this Court to compel the plaintiff to produce a reasonable scope of discovery. The parties conducted a phone conference on these

1 issues and were unable to resolve them.

2 Plaintiff refuses to produce any of the documents requested by Intervenor.¹
3 Plaintiff even refuses to produce documents, such as e-mails, that he discusses in
4 his January 16, 2015 Declaration (filed in support of his renewed Summary
5 Judgment request). Indeed, in response to Intervenor's First Discovery Requests,
6 plaintiff produced only a one-page document, and has refused to make any
7 additional production. As there has been no prior discovery in this case, plaintiff is
8 therefore taking the position that he has can fully satisfy his discovery obligations
9 by producing a single page. This is simply unfair to the adverse parties, including
10 the Intervenor.

11 **A. PLAINTIFF SHOULD BE COMPELLED TO PRODUCE**
12 **RELEVANT CORRESPONDENCE**

13 Plaintiff refuses to produce any correspondence of any kind between himself
14 and any third party regarding the pool issue. This includes his correspondence with
15 past or current ACBC Board members regarding the pool, or any others in the Cove
16 who are actively involved with the pool dispute.² See RFP 2-8 and objections
17 thereto.

18 In refusing to produce any of this correspondence, plaintiff repeatedly objects
19 that: "The Court's previous ruling in response to Plaintiff's Motion for Temporary
20 Injunction and dated December 30, 2013 are based on the documents that were in
21 the record at the time of the Court's ruling and thus the information sought by [the
22 RFP] has no possible relevance." See Objection to RFP 2-8. This is not a fair or
23 appropriate objection. Plaintiff is arguing that somehow, discovery in this case

24 ¹ Intervenor's discovery responses, and plaintiff's objections and responses, are
25 attached as an appendix to this Motion.

26 ² During the discovery conference, the undersigned counsel clarified that we were
27 only seeking production of correspondence directly related to the pool. Plaintiff still
28 refused to produce a single page of this correspondence.

1 slammed shut when he acquired his Temporary Restraining Order. He argues that
2 any documents not in the record at that time are irrelevant and not subject to
3 production.

4 There is no principal of discovery or law to support this objection. The TRO is
5 just that, a **temporary** order. The plaintiff still bears the burden of proving his
6 entitlement to a final judgment in his favor and a permanent injunction compelling
7 the perpetual operation of a swimming pool at the Cove. He has brought a
8 summary judgment motion requesting that a permanent injunction be entered **as a**
9 **matter of law**. He asserts that there are no material issues of fact. Yet he refuses
10 to produce discovery regarding his own actions and statements related to the pool.
11 This obviously undermines Intervenor's ability to oppose Summary Judgment, and
12 to oppose the claims at trial.

13 The discovery rules require the production of relevant documents, including
14 those that are "reasonably calculated to lead to the discovery of admissible
15 evidence." CR 26(b)(1). Here, Intervenor does not know exactly what Mr. Wilbur's
16 pool-related correspondence contains. However, plaintiff's public, non-privileged
17 statements about the pool are certainly relevant. If there is a trial, plaintiff will
18 testify to support his claims.

19 On January 16, 2014, Mr. Wilbur submitted a 12 page, 39 paragraph
20 Declaration to this Court in support of his Summary Judgment motion. In that
21 declaration, he makes detailed factual statements regarding many aspects of the
22 history of the pool issue at the Cove. There are detailed allegations regarding the
23 work of the Board and its committees, the vote to decommission the pool, and many
24 other aspects of the decision making process at the Cove. See Plaintiff's Declaration
25 in Support of Motion for Summary Judgment, filed on January 16, 2015. Obviously,
26 the adverse parties are entitled to test these statements through discovery. One
27 way to do that is to compare these statements against plaintiff's private
28 communications on the same issues. Yet plaintiff has refused to produce any of

1 these communications.

2 The plaintiff made the decision to bring this issue into the Courts. That
3 carries with it an obligation to produce reasonable discovery. There has been no
4 prior discovery in this case. The plaintiff's own public statements about the issues
5 in litigation are a quintessential form of relevant discovery. Plaintiff should be
6 compelled to make this production.

7 **B. PLAINTIFF SHOULD BE COMPELLED TO PRODUCE NON-
8 PRIVILEGED CORRESPONDENCE WITH BOARD MEMBER
9 DUSTIN FREDERICK**

10 Plaintiff also refuses to produce any of his relevant communications with
11 Dustin Frederick. See RFP 2 and objection thereto. Mr. Frederick formerly
12 appeared with Mr. Wilbur as co-plaintiff in this case. He left this litigation when he
13 took a position on the ACBC Board of Directors. So this former plaintiff is now
14 serving on the Board of Directors **for the defendant**. Intervenor requested
15 production of their correspondence between plaintiff and Mr. Frederick, but only
16 after the date that Mr. Frederick left the case. See RFP 2. That should avoid any
17 privilege issues.

18 As discussed in the Summary Judgment papers, Mr. Frederick does not
19 recuse himself from Board action on the litigation, or pool issues. Rather, he
20 actively involves himself in the Board's handling of this lawsuit. See Declaration of
21 Sue Corliss in Support of Summary Judgment, ¶ 32. It is believed that Mr.
22 Frederick may be acting in concert with Mr. Wilbur to try and affect the outcome of
23 this litigation. Certainly, their communications regarding pool issues will generate
24 relevant documents. Plaintiff is entitled to production of the pool-related
25 correspondence between these two central characters in the case.

26 **C. PLAINTIFF SHOULD BE COMPELLED TO PRODUCE
27 OPERATIVE DOCUMENTS ABOUT THE POOL**

28 Plaintiff also refuses to produce any pool-related documents that he has
shared back and forth with the Board or its members. See RFP 11 and objections

1 thereto. Obviously, documents shared between the Mr. Wilbur and the Board
2 regarding the pool are relevant to this litigation, which is (at least ostensibly)
3 between Mr. Wilbur, and the Board, regarding the pool. While Mr. Wilbur objects
4 to this request on burden grounds, there is no basis to conclude that it would be
5 unduly burdensome for Mr. Wilbur, the plaintiff, to produce such pool-related
6 documents in his possession. This production should be compelled.

7 **D. PLAINTIFF SHOULD BE COMPELLED TO PRODUCE**
8 **DOCUMENTS RELATED TO HIS CENTRAL CONTENTIONS**

9 Plaintiff refuses to produce documents that “support [his] contention that you
10 possess an enforceable right” in the continued operation of the pool. See RFP 12,
11 and RFP 15 and objections thereto. Without explanation, plaintiff asserts that
12 these requests are “not within the scope of permissible discovery.” Certainly,
13 documents supporting plaintiff’s central contentions are an appropriate target for
14 discovery directed to plaintiff. This production should be compelled.

15 **E. PLAINTIFF SHOULD BE COMPELLED TO PRODUCE**
16 **DOCUMENTS RELATING TO POOL COMMITTEES**

17 RFP 16 asked the plaintiff to produce documents referring or relating to his
18 work with, or communications with, any pool related committees at the Cove,
19 including correspondence with the members of any such Committee. Plaintiff
20 refuses to make this production, objecting that the request is “incomprehensible.”
21 See RFP 16 and objection thereto. Intervenor does not believe that RFP 16 is
22 “incomprehensible.”

23 Furthermore, a very significant portion of plaintiff’s recently filed declaration
24 discusses the work of pool-related committees at the Cove. For example, plaintiff
25 makes numerous factual statements about the work of the Pool Maintenance and
26 Improvement Committee, and the Long Range Planning Committee. See Wilbur
27 Declaration, filed January 16, 2014, ¶¶ 16-17. He also discusses in detail the
28 activities of a separate, “ad hoc” Pool Maintenance Committee. See *id.*, ¶¶ 23-32.
In his declaration, plaintiff even describes certain e-mail correspondence regarding

1 the work of that Committee. See id., ¶ 30 (discussing “the meeting and the follow-
2 up emails discussing the meeting’s results.”)

3 **Yet although these emails are discussed in Mr. Wilbur’s declaration,**
4 **he refuses to produce even these e-mails.** Mr. Wilbur has no reasoned basis to
5 refuse to produce the very documents he describes in his own declaration. The
6 objection to the request for committee-related documents is not well taken, and Mr.
7 Wilbur should be compelled to make this production.

8 **F. ATTORNEY FEES SHOULD BE GRANTED**

9 If the Motion to Compel is granted, CR 37(a)(4) requires that the Court
10 award the moving party the cost of bringing the motion, including attorney fees,
11 unless the court finds that the opposition to the motion was substantially justified
12 or that other circumstances make an award of expenses unjust.” Washington CR
13 37(a)(4). Here, there is not substantial justification for a plaintiff in a case as
14 complex as this to refuse to produce all but a single page of documents in response
15 to reasonable discovery. Plaintiff’s discovery tactics amount to a stonewall forcing
16 the Intervenor to bring a motion to compel to secure any form of reasonable
17 document production. Plaintiff even refused to produce documents that he then
18 described in his own declaration on Summary Judgment. In these circumstances,
19 the Court should enter an Order awarding fees. A fee and cost request can be
20 submitted after entry of the Court’s Order.

21 Respectfully Submitted

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