

The Honorable Alan R. Hancock
Date of Motion: November 27, 2013, 1:30 p.m.
Nature of Motion: Motion for Contempt
With Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF ISLAND

ROBERT 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.

NO. 13-2-00741-4

DEFENDANTS ADMIRAL'S COVE
BEACH CLUB, SALLS,
CHAMBERLAIN, SHAAK, PEETZ,
AND JONES' OPPOSITION TO
PLAINTIFFS' MOTION FOR ORDER
TO SHOW CAUSE RE: CONTEMPT
(VIOLATION OF TEMPORARY
RESTRAINING ORDER OBTAINED
SEPTEMBER 11, 2013)

I. INTRODUCTION

Plaintiffs' Motion for Contempt must be denied because defendants Admiral's Cove Beach Club ("ACBC") Jean Salls, Maria Chamberlain, Karen Shaak, Robert Peetz, and Dan Jones (collectively, "defendants"), have not violated the letter or spirit of the Temporary Restraining Order ("TRO") entered by the Court on September 11, 2013. Defendants' actions were not contemptuous but instead were an effort to conduct the election for ACBC's Board of Directors ("Board") in compliance with the Bylaws and the TRO without inviting further litigation. To do

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1 so, defendants sought the Court’s interpretation of the TRO before going forward with an election
2 that could have violated either the TRO or the Bylaws. For the reasons detailed further below,
3 plaintiffs’ motion must be denied.

4 II. FACTS

5 The underlying dispute arises from ACBC’s long-standing, divisive fight over its pool¹.
6 The TRO was entered on September 11, 2013, restraining ACBC and the individual Board
7 Members from removing the pool, levying an assessment to remove the pool, and preventing
8 members in “good standing” from running for the Board. (See TRO, attached to Declaration of
9 Vasudev N. Addanki (“Addanki Decl.”) as **Exh. A.**) From the date that the TRO was entered,
10 there has been disagreement as to its effect on ACBC’s ability to collect and enforce the pool
11 assessment, which was levied and imposed prior to the entry of the TRO. (See ¶ __ of Declaration
12 of Jean Salls (“Salls Decl.”).) Paragraph 2 of the TRO temporarily restrains and enjoins
13 defendants:

14 From imposing or levying a special assessment of any type against each lot or any
15 individual lot within the plat of Admiral's Cove, the purpose of which is to pay for
16 any part of the costs of decommissioning, filling, damaging, inactivating,
17 covering, demolishing or in any manner grading, removing, destroying or
otherwise rendering unusable, the swimming pool and related facilities owned by
the Admiral's Cove Beach Club.

18 (Addanki Decl, Exh. A, ¶ 2.) Notably absent from this paragraph is any restraint on the collection
19 or enforcement of assessments levied and imposed before the TRO went into effect. As such,
20 defendants interpreted the TRO as having no effect on the ability to collect or enforce a previously-
21 levied assessment. (See ¶ __ of Declaration of Jean Salls (“Salls Decl.”).) However, recognizing
22 the contentious nature of this action, defendants identified a need to have the Court resolve the
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25 ¹ Because the Court is familiar with the facts of the underlying dispute, defendants will not repeat them here.

1 differing interpretations of the language of the TRO before moving forward with the election.

2 (Salls Decl., ¶ __ .)

3 The need for Court interpretation arose because only members in “good standing” may vote
4 in an election for the Board. (*See* Bylaws, Art. V, Sec. 1, attached to Salls Decl. as **Exh. A**).

5 In addition, only members in “good standing” may run for a position on the Board². (*Id.* at Art.

6 XII, Sec. 6.) However, to be in “good standing,” a member must have paid all dues and

7 assessments due and owing at the time of the election. (*Id.* at Art. III, Sec. 4). If a member has not

8 paid an assessment that is due, that member is not in “good standing.” (*Id.*) Therefore, the

9 question as to whether ACBC may collect and enforce the previously-levied assessment directly

10 impacts who is in “good standing” and who may vote for and run for the Board. (Salls Decl., ¶ __

11 .) Moreover, the need for the Court’s ruling on the proper interpretation of the TRO is apparent

12 from plaintiff Wilbur’s October 22, 2013 posting to ACBC’s community website (hosted by

13 Nextdoor.com) stating that individuals need not pay the assessment to be in “good standing.”

14 (Salls Decl. **Exh. B**.) At this point in time, the Board considers a sizeable number of ACBC

15 members not to be in “good standing” solely because they have not paid the assessment, which was

16 levied and imposed before the TRO was signed into effect. (Salls Decl., ¶ __ .) Defendants have

17 decided that the standing of these members must be determined before an election can proceed.

18 (Salls Decl., ¶ __ .)

19 In addition to the above considerations, The Board has been threatened with litigation if it

20 does not follow through with the wishes of the majority of the members, who voted to remove the

21 pool. (Salls Decl., ¶ __ .) These threats have come from ACBC’s vocal “anti-pool” faction. (Salls

22 Decl., ¶ __ .) If members who have not paid the assessment in question are permitted to vote or

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24 ² To be a Board Member, ACBC members must also meet other requirements, such as not having been
25 removed from office under Article VI, Section 6 for the two years prior to running for another Board position. (*Id.* at Art. VI, Sec. 4).

1 run for the Board based on the language of the TRO, the Board fears that the “anti-pool” faction
2 would file a lawsuit against the Board for holding an election in violation of the Bylaws. (Salls
3 Decl., ¶ __ .) This fear arises because: (1) the Bylaws require a member to have paid all
4 assessments before voting or running for the Board; and (2) the language of the TRO does not
5 prohibit the current Board from considering the previously-levied pool assessment when
6 determining a member’s standing. (Salls Decl., ¶ __ .) For this additional reason, defendants have
7 taken the position that the TRO’s impact on the definition “good standing” needs to be determined
8 by the Court before the annual meeting or election can proceed. (Salls Decl., ¶ __ .)

9 The Bylaws govern the scheduling of the annual membership meeting and the election of
10 directors. The Article IV of the Bylaws provides:

11 **Section 1 – REGULAR MEETINGS**

12 Meetings of the members shall be held at least once a year at such a place or
13 places as shall be designated by the Board of Directors. Unless otherwise ordered
14 by the Board of Directors, the regular Annual Meeting of the members shall be
15 held on the fourth Saturday in October of each year, unless such date falls on a
legal holiday, in which case the said meeting shall be held on the next succeeding
Saturday which is not a legal holiday.

16 (Salls Decl., Exh. B). Election of the Board of Directors is governed by Article VI of the Bylaws
17 and provides:

18 **Section 3 – ELECTION**

19 Election of Directors shall be conducted at the regular Annual Meeting by
20 absentee ballot of all eligible voters. Members shall be elected to the Board of
21 Directors by plurality vote, the candidate or candidates receiving the largest
22 number of votes being elected. Cumulative voting is not permitted. In the event of
23 a tie requiring additional voting to determine which candidate will be elected, it
24 will be broken by secret ballot of the members present and voting in person at the
25 meeting at which such Directors are being elected whether or not a quorum is
physically present at the meeting.

1 (*Id.*). The term of office for Board Members is also governed by Article VI of the
2 Bylaws:

3 **Section 2 – TERM OF OFFICE**

4 Directors shall be elected for a term of two (2) years continuing until their
5 successors are elected and duly qualified with four (4) being elected in the odd
6 numbered years and three (3) in the even numbered years.

7 (*Id.*) Finally, when an election cannot occur, albeit for a different reason, Article V of the Bylaws
8 contemplates the continuance of a meeting for the election of directors until such time as an election
9 can occur:

10 **Section 3 – ADJOURNMENTS**

11 If there is not a quorum (Article V, Sec 2) present at any duly called membership
12 meeting, an adjournment, or adjournments, may be taken without notice being
13 given, but any meeting at which directors are to be elected shall be continued from
14 month to month until such directors have been elected (Article 1 V, Sec 3).

14 (*Id.*)

15 The annual meeting was originally scheduled for October 26, 2013. (Salls Decl., ¶ __ .)
16 The ballots for the Board election were originally scheduled to be mailed between 15 and 50 days
17 before the meeting as per Article IV Section 4 of the Bylaws. (Salls Decl., ¶ __ .) Defendants
18 hoped to have the “good standing” issue resolved before mailing the ballots for the October 26,
19 2013 annual meeting. (Salls Decl., ¶ __ .) However, per the consent of the parties, the hearing on
20 the TRO was continued until November 27, 2013. (Addanki Decl., ¶ __ .) The first continuance
21 was because defense counsel needed additional time to prepare for the hearing. (Addanki Decl., ¶
22 __ .) The second, third, and fourth continuances were because of this Court’s unavailability until
23 November 4, 2013; the parties agreed that it would be best if Your Honor decide all issues related
24 to this case. (Addanki Decl., ¶ __ .) The most recent continuance from November 4, 2013 to
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1 November 27, 2013 was because two defendants, Palmer and Delahanty, are adverse to the
2 remaining defendants and could not be represented by the undersigned defense counsel at the
3 November 4, 2013 hearing. (Addanki Decl., ¶ __ .) Up until immediately before the November 4,
4 2013 hearing, ACBC had been seeking dismissal of all individual defendants and believed an
5 agreement for the dismissal of all individual defendants was possible. (Addanki Decl., ¶ __ .)
6 However, the week before the November 4, 2013 hearing, discussions for the dismissal of the
7 individual defendants fell apart. (Addanki Decl., ¶ __ .) On October 31, 2013, plaintiffs' counsel
8 informed the undersigned that plaintiffs would not dismiss the individual defendants, not even the
9 adverse Palmer and Delahanty. (Addanki Decl., ¶ __ ; counsel's October 31, 2013 e-mail is
10 attached to Addanki Decl. as **Exhibit B**). Consequently, the undersigned had to request a
11 continuance of the hearing so separate defense counsel could be assigned to represent Palmer and
12 Delahanty. (Addanki Decl., ¶ __ .) It is important to note that plaintiffs' counsel's October 31,
13 2013 e-mail agreed that the "good standing" issue needed to be resolved by the Court at a hearing.
14 (*Id.*) Because the parties were unable to resolve the issue of "good standing" prior to the October
15 26, 2013 annual meeting, defendants postponed the election and, consequently, the annual meeting.
16 (Salls Decl., ¶ __ .)

17 **III. EVIDENCE RELIED UPON**

18 Defendants' opposition is based on all records and pleadings previously filed in the Court
19 record as well as the declarations of Vasudev N. Addanki and Jean Salls and the exhibits attached
20 thereto.

21 **IV. AUTHORITY AND ARGUMENT**

22 Contempt is defined under RCW 7.21.010 as intentional "[d]isobedience of any lawful
23 judgment, decree, order, or process of the court." (RCW 7.21.010(1)(b).) When determining if a
24 party contemptuously violated a temporary restraining order, a court must determine if the enjoined
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1 party intentionally did that which was prohibited. TROs are to be followed to their express
2 language and their spirit. *Roehl v. Public Utility Dist. No. 1 of Chelan County*, 43 Wn.2d 214, 231,
3 261 P.2d 92 (1953). However, when considering whether an action violates the TRO, the Court
4 must consider “the difference between that which was prohibited and that which was done.” *Id.* at
5 232.

6 **A. Defendants Did Not Violate the TRO**

7 Defendants did not violate the express language or the spirit of the TRO. Rather,
8 defendants interpreted the TRO in a reasonable manner after comparing its terms to the Bylaws.
9 On one hand the TRO does not expressly prohibit the enforcement of a previously-levied
10 assessment nor prohibit the consideration of that assessment for a determination of “good
11 standing.” On the other hand the Bylaws state that a member is not in “good standing” if he/she
12 fails to pay current and back assessments. This is important because whether a member is in “good
13 standing” affects that member’s ability to vote and run for the Board. While it was defendants’
14 intent to have the interpretation of these documents resolved by the Court prior to the October 26,
15 2013 annual meeting, it simply was not possible due to the Court’s schedule as well as other
16 reasons. Faced with this conundrum, defendants had two options: (1) go forward with the new
17 Board Member election without resolving the inconsistencies between the TRO and the Bylaws; or
18 (2) delay the election and annual meeting for a short period until the conflict between these two
19 documents is resolved by the Court. For obvious reasons, and in the best interests of ACBC and all
20 of its members, the Board chose the second option.

21 Under the first option, an election would have occurred amidst uncertainty and could have
22 embroiled ACBC in further litigation as to the legitimacy of the vote. If defendants accepted
23 plaintiffs’ interpretation of the TRO, despite the absence of a prohibition on the collection and
24 enforcement of previously-levied assessments, the election would have been in violation of the
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1 express language of the Bylaws. To cite the uncertain and amorphous “spirit” of a TRO as the
2 basis for violating the express language of the Bylaws would invite litigation that the Board
3 violated its duty to ensure a proper election. If ACBC held an election based on defendants’
4 interpretation of the TRO and limit voting and nominations to only those members who paid the
5 previously levied assessment, plaintiffs and their supporters would have brought further action
6 (which they have done anyway by inexplicably filing the instant Motion for Contempt). Either
7 way, a substantial portion of ACBC’s membership would have questioned and fought the
8 legitimacy of the election.

9 Under the second option, the election would be delayed. The Court would provide its
10 interpretation of the TRO, thereby determining who can vote and run for the Board. Under the
11 second option, there would be no question as to the legitimacy of the election. Yes, there would be
12 minor delay. Yes, the current Board would remain until the “good standing” issue is resolved.
13 However, as soon as the Court gives its binding interpretation of the TRO, the election would
14 proceed accordingly.

15 In deciding between the two options, defendants chose the second option of delaying the
16 election for the greater good of ACBC. As directors of ACBC, the individual Board Members
17 have a duty to act in ACBC’s best interests. Defendants thus chose the second option and delayed
18 the election. Notably, Article IV, Section 1 of the Bylaws, governing regular meetings, gives the
19 Board the authority to change the date of the meeting. Additionally, the term of a Board Member
20 is not set by a specific date or time, but rather runs until a successor is elected. (Bylaws, Art. VI,
21 Sec. 2.) Therefore, the Board’s action to delay the meeting and the election was not in violation of
22 the Bylaws. Between the two available options, the negative repercussions from a slight delay in
23 the election paled in comparison to the aftermath of an election with questionable legitimacy. The
24 Court is well aware of this community’s propensity for litigation. Based on that propensity the
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1 Board decided that the legitimacy of the election was more important than the specific date of the
2 election. In reaching this decision, there was no intent to prevent anyone from participating in the
3 election or to keep anyone from being on the Board. Rather, the delay was solely to ensure that the
4 decision regarding who can vote and run for the Board was made properly and with legal effect.

5 **B. Defendants' Actions Were Not to Retain Control of the Board**

6 Plaintiffs assert that defendants' actions were to "retain control" of the Board. Nonsense.
7 If defendants truly sought to retain control of the Board, they would have proceeded with the
8 election based on defendants' interpretation of the TRO and prevented all members who have not
9 paid the assessment from voting or running. Since a majority of the members who have not paid
10 the assessment likely support plaintiffs and candidates that agree with plaintiffs' positions,
11 preventing those members from voting could have solidified defendants' places on the Board.
12 Instead of forging ahead with its interpretation of the TRO (which it could have in good faith based
13 on the poor wording of the TRO) defendants recognized the uncertainty of the TRO's impact and
14 decided to have the Court determine who can and cannot vote and run for election. In doing so,
15 defendants intended to avoid further litigation from both "pro-pool" and "anti-pool" factions,
16 which only harms ACBC and its members. No matter how the Court resolves the issue, all
17 members of ACBC will be bound by the Court's ruling, including defendants, who recognize that
18 they may not be re-elected to the Board after the forthcoming election. Plaintiffs' argument is
19 meritless and devoid of factual bases.

20 Based on defendants' efforts to have this issue resolved by the Court rather than plunge
21 ACBC in more needless litigation, plaintiffs cannot seriously contend that defendants are bound by
22 plaintiffs' myopic interpretation of the TRO, which further divides this already fractured
23 community.
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1 the TRO or the spirit of the TRO. If they are deemed to somehow have violated the spirit of the
2 TRO, that was never their intent, and their actions do not rise to the level of contempt.
3 Consequently, defendants request that the Court deny plaintiffs' Motion for Contempt. Defendants
4 further request that the Court provide the parties with its interpretation of paragraph 2 of the TRO
5 so the election can proceed as soon as possible.

6 DATED this 25th day of November, 2013.

7 BETTS, PATTERSON & MINES, P.S.

8
9 By _____
10 Vasudev N. Addanki, WSBA #41055
11 David R. Greenberg, WSBA #46308
12 Attorneys for Defendants Admiral's Cove
13 Beach Club, Jean Salls, Maria Chamberlain,
14 Karen Shaak, Robert Peetz, and Dan Jones
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1 **CERTIFICATE OF SERVICE**

2 I, Valerie D. Marsh, declare as follows:

3 1) I am a citizen of the United States and a resident of the State of Washington. I am
4 over the age of 18 years and not a party to the within entitled cause. I am employed by the law
5 firm of Betts, Patterson & Mines, P.S., whose address is One Convention Place, Suite 1400,
6 701 Pike Street, Seattle, Washington 98101-3927.

7 2) By the end of the business day on November 25, 2013, I caused to be served upon
8 counsel of record at the addresses and in the manner described below, the following documents:

- 9 • **Error! Reference source not found.; and**
- 10 • **Certificate of Service.**

11 ***Counsel for Plaintiffs:***

12 Christon C. Skinner
13 Law Offices of Christon C. Skinner, P.S.
14 791 SE Barrington Drive
Oak Harbor, WA 98277-3278

- U.S. Mail
- Hand Delivery
- Telefax
- UPS
- E-mail

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

17 DATED this 25th day of November, 2013.

18
19 _____
20 Valerie D. Marsh