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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

OPPOSITION OF INTERVENOR SUE
CORLISS TO PLAINTIFF WILBUR’S
MOTION TO AMEND COMPLAINT

SUE CORLISS,

Intervenor,

v.

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

Defendants.

SUMMARY AND ARGUMENT

This “swimming pool case” from the Admiral’s Cove Beach Club returns to this
Court upon remand, after reversal on appeal. As to plaintiff’s current motion to

1 amend, Intervenor Corliss opposes the motion only in part. Intervenor has no
2 objection to adding issues related to the community's new, 2016 vote regarding the
3 pool to Wilbur's complaint on remand. It seems clear that this Court will be called
4 upon to rule on the validity of that second repetitive vote, particularly in light of the
5 reversal on appeal.

6 However, Wilbur also seeks amendment to add new theories and arguments
7 as to why the 2013 vote of the community was invalid.¹ Intervenor opposes
8 amendment that would include these new arguments regarding the 2013 vote.
9 Having lost on appeal, Wilbur wants a "do over" to attack the 2013 vote again, using
10 theories he could have articulated anytime during lengthy prior proceedings. There
11 has been more than three years of litigation on the 2013 vote, a full merits hearing,
12 and a full merits appeal. Intervenor undertook considerable burden and expense to
13 prevail in that litigation. It would be incredibly unfair to force Intervenor to undergo
14 yet another full cycle of litigation -- to possibly include another appeal -- regarding
15 the 2013 vote, where Wilbur offers no excuse for why he waited this long to offer up
16 his new theories. There has been undue delay on Wilbur's part.

17 **RECENT PROCEDURAL HISTORY**

18 Back in December, 2013, this Court enjoined the Beach Club from acting to
19 decommission its dilapidated and outdated swimming pool. The community had,
20 after careful study, voted to decommission the pool. However, based on arguments
21 from plaintiff Wilbur, this Court ruled that the vote of the community was likely
22 invalid, and issued an injunction.

23 In May, 2015, this Court ruled that the community's 2013 vote to
24 decommission the pool was invalid as a matter of law. The Court issued an order
25

26 _____
27 ¹ He appears to argue that the 2013 ballot was somehow invalid on its face because
28 it lacked a "do nothing" option among the options presented.

1 directing the community to “repair, maintain and operate” the pool for the benefit of
2 plaintiff Wilbur. The Court further ruled that the community could not ever remove
3 or decommission the pool without first changing its governing documents. Intervenor
4 timely appealed that ruling.

5 After reviewing the appeal briefing, the Court of Appeals for Division One
6 announced *sua sponte* that they would not hold oral argument on the appeal.² They
7 then ruled, unanimously, to reverse the trial court’s summary judgment ruling. The
8 Court of Appeals ruled that there was nothing in any of the formation documents
9 governing the Beach Club that prohibited decommissioning the pool. They further
10 ruled that Wilbur offered no other valid basis to conclude that the vote to
11 decommission the pool was wrongful. “[T]he Club has the authority, pursuant to its
12 governing documents, to remove the pool at any time.” Unpublished Opinion, at 9
13 (attached as an appendix to this Opposition). “Wilbur fails to establish the invalidity
14 of the May 2013 vote.” *Id.*

15 Based upon this unanimous ruling, it is now clear that the Beach Club was
16 wrongfully enjoined from decommissioning its swimming pool back in 2013, and that
17 it should have been allowed to go forward and implement that vote when it took place.
18 Accordingly, Intervenor will seek a ruling from this Court to enforce and implement
19 the 2013 vote to decommission. Intervenor also intends to seek a judgment against
20 Wilbur for the attorney fees expended in opposing the wrongful injunction, and other
21 damages caused by the injunction. See Washington CR 65(c); *Ino Ino, Inc. v. City of*
22 *Bellevue*, 132 Wn.2d 103, 143, 937 P.2d 154 (1997).

23 Despite having prevailed in the trial Court in 2015, the Beach Club Board went
24 forward and held a second vote seeking community approval for an assessment to
25

26 ² Defendant Admiral’s Cove Board of Directors actually handled all of the appeal
27 briefing for Wilbur, who merely filed a concurrence. The defendants in this case
28 have thus stepped into the shoes of the plaintiff Wilbur.

1 repair the swimming pool. According to their own public statements, they did this
2 because this Court had **ordered** them to complete these repairs. Indeed, this is what
3 they told the community in the balloting materials. The very first statement in the
4 Frequently Asked Question mailing that accompanied the ballot was: “**Why**
5 **renovate the pool? Why now?**: “Island County Superior Court affirmed in 2015
6 that we are required to maintain and operate all club facilities under the existing
7 Articles of Incorporation, Bylaws, Covenants and other documents.” Delahanty
8 Declaration, Ex. B.

9 Board member Ed Delahanty further admits that the entire justification for
10 the second, repetitive ballot was this Court’s prior, **and now reversed**, Order.
11 “Pursuant to the Order, the Board has acted to fulfill its obligation ‘to maintain,
12 repair and operate the swimming pool and its related facilities in a reasonable
13 manner.’” “The Board has spent much time since the Order carefully developing a
14 ballot to ABCB members about the swimming pool renovation.” Delahanty
15 Declaration, Accompanying the Declaration of Christon Skinner, at 2.

16 Intervenor Corliss intends to argue that this second vote is hopelessly tainted
17 and invalid for numerous reasons. The second vote, justified and promoted based
18 upon this Court’s now reversed Order, should not stand. The original vote of the
19 community to decommission their pool, which was valid but wrongfully enjoined,
20 should be enforced in this case.

21 **CONCLUSION**

22 Intervenor has no objection to adding the 2016 vote to this case through
23 Amendment. Intervenor intends to ask this Court to invalidate the second vote in
24 favor of the first, valid and enforceable, one.

25 However, Intervenor objects to adding any new arguments or theories
26 regarding the validity of the 2013 vote. Wilbur has offered no excuse as to why he
27 failed at any time during the lengthy prior proceedings to bring those arguments
28

1 forward. There has been three years of litigation. It would be incredibly burdensome,
2 unfair and prejudicial to intervenor, and indeed to this entire community, to allow
3 Wilbur to create an entirely new round of litigation regarding the validity of the 2013
4 vote. It is too late for that. Wilson v Horsley, 137 Wn.2d 500, 505, 974 P.2d 316
5 (1999).
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8 Respectfully Submitted

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