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SUPERIOR COURT OF WASHINGTON FOR ISLAND COUNTY

ROGER L. CLOSE,

Plaintiff,

vs.

ADMIRAL'S COVE BEACH CLUB, INC., a
Washington non-profit corporation, now known
as ADMIRALS COVE HOMEOWNERS
ASSOCIATION, INC.,

Defendants.

NO. 10-2-00479-8

ORDER ON MOTION FOR PARTIAL
SUMMARY JUDGMENT

THIS MATTER, having come on regularly before the Court on the Motion of Roger

Close for an Order for Partial Summary Judgment, the Court having heard the argument of
counsel, reviewed the records and files herein, and specifically:

1. The Declaration of Roger Close, dated December 22, 2010.
2. The Declaration of Michael D. Brandt, dated December 21, 2010.
3. The Motion for Summary Judgment, dated December 21, 2010.
4. The Declaration of Dustin Frederick in Response to Motion for Summary
Judgment, dated January 13, 2011.
5. The Response of Admiral's Cove, dated January 14, 2011 and attached
Appendix.
6. Plaintiff's Strict Reply to Defendant's Response to Motion for Summary
Judgment, dated January 24, 2011.
7. The Declaration of Roger Close, dated January 24, 2011.

AND the Court being fully advised in the premises, now, therefore,

ORDER ON MOTION FOR PARTIAL SUMMARY
JUDGMENT- 1
5318717

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THE COURT HEREBY FINDS

1. Roger Close, the plaintiff, is an owner of property in the Admiral's Cove community;
2. Owners of property in the Admiral's Cove community are bound by the bylaws, articles of incorporation, covenants, conditions and restrictions, and other governing documents recorded at the time they purchased their property, regardless of whether the association here is a homeowners' association, as that term is defined in the statute, or whether it simply is an association for purposes of the governing documents only.
3. The governing documents do touch and concern the land and therefore are valid covenants running with the land or equitable servitudes.
4. A property owner would be unjustly enriched if he or she could retain the benefits conferred by Admiral's Cove's amenities without paying for the benefits and, thus, the law implies a contract to pay dues imposed according to Admiral's Cove's obligation to act fairly and within the scope of the corporate function outlined in its Articles of Incorporation and Bylaws;
5. Property owners may not opt-out of the Admiral's Cove association and the Board of Directors has no authority to permit any owner to opt-out of the Admiral's Cove association;
6. The Board of Directors of Admiral's Cove has the authority granted to it in the governing documents, including the Articles of Incorporation, Bylaws, and Covenants, to levy dues and assessments; and

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7. All owners of property in Admiral's Cove are members of the Admiral's Cove association regardless of whether it is a homeowners' association as defined by RCW 64.38.

THE COURT FURTHER FINDS that material issues of fact preclude the determination of whether Admirals Cove is a homeowners' association or further resolution of this case; NOW THEREFORE

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Court DENIES Plaintiff's Motion for Summary Judgment.


DONE IN OPEN COURT this 22nd day of March 2011.

ALAN HANCOCK

The Honorable Alan R. Hancock

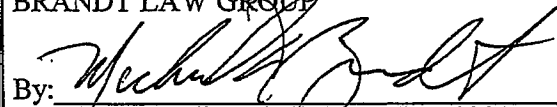
Presented by:

LEE SMART, P.S., INC.

By: 
William I. Cameron, WSBA 5108
Attorneys for Defendant Admiral's Cove

Approved as to Form:
Notice of Presentation Waived:

BRANDT LAW GROUP

By: 
Michael D. Brandt, WSBA No. 20901
Of Attorneys for Plaintiff