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6 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
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8 **IN AND FOR THE COUNTY OF ISLAND**

9 ROBERT WILBUR and DUSTIN
10 FREDERICK,

11 Plaintiffs,

12 vs.

13 ADMIRAL'S COVE BEACH CLUB, a
14 Washington non-profit corporation;
15 and JEAN SALLS, MARIA
16 CHAMBERLAIN, KAREN SHAAK,
17 ROBERT PEETZ, ELSA PALMER,
18 ED DELAHANTY AND DAN JONES,
19 individuals,

20 Defendants.

NO. 13-2-00741-4

**PLAINTIFF'S OPPOSITION TO
SUSAN CORLISS'S MOTION
TO INTERVENE**

21 **I. RELIEF REQUESTED & SUMMARY OF ARGUMENT**

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23 The proposed intervenor, Susan Corliss, cannot meet the legal requirements for
24 intervention in this case as a matter of right. This is an action in which the Plaintiff
25 requested that the entity known as Admiral's Cove Beach Club ("ACBC"), and certain
26 of its individual directors, be permanently enjoined from decommissioning ACBC's
27 swimming pool and related facilities and from attempting to assess funds from
28 members for that purpose. In addition, Mr. Wilbur requested that the court declare, as
29 a matter of law that, unless ACBC's specific organizational purposes were changed as
30 provided in its bylaws, no action could be taken by its board of directors to
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1 decommission or replace or fail to maintain the ACBC swimming pool and its related
2 facilities.

3 The management of ACBC's activities and the management of its commonly
4 held assets is the sole responsibility of the organization's board of directors. The relief
5 requested in the Plaintiff's lawsuit and the pending motion for summary judgment is
6 directed to the Defendant, ACBC as an entity, and as a result, only the Plaintiff and the
7 board of directors acting on behalf of Defendant, ACBC have a "direct interest" that
8 can be affected in this litigation. Since the elected board of directors is exclusively
9 authorized by ACBC's bylaws to take action relative to the assets of the organization,
10 individual property members who merely disagree with the board's lawful actions and
11 decisions have no right to participate in this lawsuit.

12 Even if she could demonstrate a direct interest that was not being adequately
13 protected by the current board of directors of ACBC, the proposed intervenor waited
14 too long to become involved in this litigation and her application is "untimely." It is
15 neither reasonable nor fair for a person in Ms. Corliss's situation to wait until the eve of
16 a summary judgment hearing before attempting to get involved in this case. Contrary
17 to Ms. Corliss's argument on this subject, the question of whether a motion to
18 intervene is "timely" is a matter left to the trial court's discretion. There is no bright line
19 date by which an application for intervention is considered timely *per se*. The trial court
20 considers the particular facts and circumstances affecting each case to determine if an
21 intervenor's application is timely; or is so unjustifiably late that the resulting extra cost
22 and delay to the existing parties makes intervention unreasonable. Simply because the
23 motion to intervene was filed prior to trial, does not mean that the court must consider
24 it "timely."
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26 Ms. Corliss is also wrong when she contends that her request for intervention is
27 "mandatory" simply because the Plaintiff seeks declaratory relief in this case. Ms.
28 Corliss argues that "all persons" who claim or have an interest that might be affected
29 by the declaratory relief requested *must* be made a party. Citing RCW 7.24.110. By
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1 her logic then, the Plaintiff was required to join all 600 property owners within the plat
2 of Admiral's Cove in order to obtain declaratory relief on the issues identified in the
3 complaint. That argument is neither logical nor a proper application of the law in this
4 case. Again, because ACBC is a legal entity governed by and represented by a duly
5 elected board of directors, the only party with a genuine, direct legal interest in a
6 declaratory judgment action relating to whether ACBC can decommission its
7 swimming pool, is the entity itself – not each and every property owner who may be a
8 member of the organization.
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10 11 II. PERTINENT FACTS

12 The Admiral's Cove Beach Club is an association that was formed in 1969 "[t]o
13 construct, install, maintain and/or operate athletic and recreational facilities of all types
14 and kinds for benefit of the members." ACBC is governed by a board of directors who
15 are elected by and serve at the pleasure of the membership. ACBC is not a
16 Homeowner's Association because it permits non-owners to be members of the
17 corporation pursuant to an "Associate Membership."
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19 Article V of ACBC's Articles of Incorporation describes the corporation's general
20 purposes, including the purpose "[t]o construct, install, maintain and/or operate athletic
21 and recreational facilities of all types and kinds for benefit of the members."
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23 Article II of ACBC's Bylaws states that the object of the "Club" shall be to:

24 "[p]rovide and operate recreational facilities for the benefit of the members;" and
25 to "[p]rocur[e], maintain, operate and protect the recreational (and associated
26 safety) concerns of the members of the community of Admiral's Cove, subject to
27 the approval of the members of the club."
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29 Although Article II of the Bylaws refers, generally, to the members' ability to
30 "approve" procurement, operation, maintenance and protection of the recreational
31 concerns, this general approval process does not permit the membership to alter the
32 Corporation's "purposes" by a simple majority vote of the members. Any action of that

1 nature requires a full two-thirds majority vote of the members at a meeting of the
2 members called for that purpose.

3 Section 1 of Article 8 of the ACBC bylaws provides as follows:

4 Subject to limitations in the Articles of Incorporation and these Bylaws, and any
5 applicable county, state, federal laws or regulations all powers of the club shall
6 be exercised by or under the authority of, and the business and affairs of the
7 club shall be controlled by the board of directors. (Emphasis supplied.)

8 Section 2 or Article 8 provides that the board is responsible for maintaining and
9 operating the properties and facilities owned by the club in accordance with the articles
10 of incorporation and the bylaws. Section 3 of that Article provides that the board is
11 authorized to "conduct, manage and control the affairs and business of the club..."
12

13 The Plaintiff brought suit in this case against ACBC as an entity and the ACBC
14 board of directors who were in office in September of 2013. At the time the action was
15 commenced, the defendant board members were identified in the initial complaint as
16 Defendants Jean Salls, Marilyn Chamberlain, Karen Shaak, Robert Peetz, Elsa
17 Palmer, Ed Delahanty and Dan Jones. A majority of this board attempted to
18 decommission and demolish the swimming pool without proper authority and without
19 the required approval of the members of ACBC. The defendant board members
20 attempted to impose a special assessment for the demolition or decommissioning of
21 the swimming pool, an action that was directly contrary to the stated purposes of
22 ACBC and in contravention of the Plaintiff's right to have access to the swimming pool
23 and related facilities. In addition, the defendant board members created a deceptive
24 and misleading ballot for submission to the general membership in connection with the
25 swimming pool "assessment." The board of directors then in office, failed to abide by
26 and adhere to the express provisions of a motion that was unanimously passed by the
27 members at their annual membership meeting conducted in 2012. Instead of following
28 the provisions of a membership motion that passed unanimously, the board created a
29 ballot that basically gave the members the choice if being assessed several hundred
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1 thousand dollars to renovate the pool or decommission it at a substantially lower cost.
2 This ballot measure was contrary to ACBC's Bylaws but was submitted nevertheless.
3 A little more than half of the members voted on this issue with 165 members choosing
4 to be assessed at the lower number and decommission the pool. 153 members voted
5 to upgrade the pool despite the substantial cost.

6 Ms. Corliss incorrectly characterizes the association members' vote on this
7 flawed ballot measure as an indication that "hundreds of members oppose Plaintiff's
8 request" [for summary judgment.] (See page 2, line 9 of Corliss's Motion to Intervene.)
9 This statement is not only inaccurate and intellectually dishonest, it is not relevant to
10 the issue of intervention.
11

12 The Plaintiff's lawsuit sought to enjoin the Board's improper actions related to
13 the swimming pool assessments and the efforts to decommission it. In connection with
14 the filing of the initial complaint, the Plaintiff sought the entry of a temporary injunction.
15 After a hearing at which the Defendant, ACBC and its individual board members
16 participated and were represented by counsel, the court granted the request for a
17 temporary injunction pending the final disposition of this case. In its oral ruling, the
18 court made several, dispositive statements. For example, the court, in its oral ruling
19 concluded the following:
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21 "So it seems obvious that the Bylaws of the association clearly presupposed
22 the existence of the pool, and any action taken that would decommission the
23 pool would be contrary to the Bylaws.

24 It's also important to note that the deeds of beach club members contain
25 specific language granting them memberships in the beach club and further
26 provides that the beach club, quote, "will own and maintain certain beach
27 rights, recreational areas, swimming pool" -- underscore the words swimming
28 pool -- "and other tracts." Unquote. So the property owners have a property
29 right in this connection.

30 It also seems obvious that the plaintiffs in this case, as members of the
31 association, have a clear legal right to the continued operation and
32 maintenance of the pool, a well-grounded fear of the immediate invasion of that

1 right based on the Board's decision to follow the unauthorized vote to
2 decommission the pool and impose a special assessment to do so, and they
3 would be actually and substantially injured if the Board was allowed to proceed
4 with these actions. Clearly, they have no adequate remedy at law in this
5 connection either. So, again, by agreement, the restraint against the
6 decommissioning of the pool is granted.”¹

7 Since the date of the entry of the court's order granting the Plaintiff's motion for
8 a temporary injunction, a new board of directors was elected at an annual meeting of
9 the membership. The new board replaced several of the members who were named
10 as individual defendants in this lawsuit and who voted to decommission the swimming
11 pool and assess members for the costs associated.²

12 By agreement of the parties, the individual board members who were originally
13 named as defendants in this case have been dismissed from the lawsuit. The only
14 remaining defendant in this case now is the entity known as Admiral's Cove Beach
15 Club, a non-profit corporation.

16 The current members of the board of directors for Admiral's Cove Beach Club
17 have made decisions about how to respond to the Plaintiff's motion for summary
18 judgment as they are permitted to do in ACBC's Bylaws. Since the board represents
19 all of the members of ACBC and by their election have been delegated the authority to
20 manage club affairs, there is nothing about their actions in this regard that can be
21 considered “inadequate” or improper. Ms. Corliss (an unsuccessful candidate for a
22 board position at the last election) and the former board members simply disagree with
23 the new board's decision making and now seek to undermine that decision by injecting
24 themselves into this lawsuit.
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29 ¹ In making its decision to grant the temporary injunction requested by the Plaintiff, the court was
30 mindful of the law in this state requiring that a court only issue a temporary injunction if it appeared from
31 the record that the party seeking that relief was likely to prevail in the case in chief.

32 ² Among those new board members is former Plaintiff, Dustin Frederick. Mr. Frederick dismissed his
complaint against the named defendants and is no longer a party to this proceeding. The remaining
plaintiff is association member Robert Wilbur.

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III. LAW AND DISCUSSION

Ms. Corliss seeks to intervene in this lawsuit as a "matter of right." CR 24(a) governs a request to intervene in a pending lawsuit as a matter of right.

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

The Intervenor's Application is not timely. The Proposed Intervenor waited too long to become involved in this litigation and her application is "untimely." It is neither reasonable nor fair for a person in Ms. Corliss's situation to wait until the eve of a summary judgment hearing before attempting to get involved in this case. Contrary to Ms. Corliss's argument on this subject, the question of whether a motion to intervene is "timely" is a matter left to the trial court's discretion. There is no bright line date by which an application for intervention is considered timely *per se*. The trial court considers the particular facts and circumstances affecting each case to determine if an intervenor's application is timely; or is so unjustifiably late that the resulting extra cost and delay to the existing parties makes intervention unreasonable. Simply because the motion to intervene was filed prior to trial, does not mean that the court must consider it "timely."

In the case of Columbia Gorge Audubon Soc'y v. Klickitat Cnty., 98 Wash. App. 618, 626, 989 P.2d 1260, 1265 (1999), the case cited by Ms. Corliss to justify the timeliness of her tardy motion, the court held:

"The timing of the motion is not, by itself, dispositive. The court must examine the surrounding circumstances, such as opportunity to identify the threatened interest, reason for delay, and any adverse impact of delayed intervention."

1 (Citations omitted.)

2 To intervene by right under CR 24(a), an applicant must show either "a right to
3 intervene under a statute" or that the applicant "possesses a legal interest not
4 adequately represented" by the other parties. *In re Cloverdell*, 39 Wn. App. 887, 890,
5 696 P.2d 1241 (1985) (foster parent could not show legal interest sufficient for
6 intervention in dependency proceeding). Ms. Corliss has no statutory right to intervene
7 in this lawsuit. Therefore, in order to intervene by right in this case, Ms. Corliss must
8 demonstrate that she satisfies the three requirements set out in CR 24(a)(2).
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10 Specifically, she must demonstrate:

- 11 1) a legal "interest," in the lawsuit which, in this context, means an "interest" that
12 goes beyond just a desire to affect the outcome of the case;
- 13 2) a genuine risk that the disposition of this lawsuit in her absence will
14 practically and legally impair her ability to protect a valid interest; and
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- 16 3) that the current parties to the lawsuit cannot or do not protect that interest.

17 *See, Spokane County v. State*, 136 Wn.2d 644, 650, 966 P.2d 305 (1998) (union not
18 entitled to intervene as matter of right in dispute where PERC, as existing party,
19 adequately represented union's interests); *Westerman v. Carey*, 125 Wn.2d 277, 303,
20 892 P.2d 1067 (1994) (prosecutor's motion to intervene in action brought by office of
21 public defender challenging general order of district court was properly denied)
22 (quoting *In re J.H.*, 117 Wn.2d 460, 468, 815 P.2d 1380 (1991), and *State v. Roff*, 178
23 Wn. 311, 314, 34 P.2d 899 (1934)).
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25 **The Proposed Intervenor does not have a "direct interest" in this lawsuit.**

26 The Washington Supreme Court's reasoning and decision on the issue of intervention
27 in the *Spokane County* case, *supra*, is somewhat similar to the present matter. In that
28 case, a union representing deputy prosecutors sought to intervene in a lawsuit being
29 handled by the Public Employee Relations Commission ("PERC"). The court
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1 concluded that the union did not have the right to intervene as a matter of right and
2 held,

3 "[a]s the Deputy Prosecutors point out, the ability of the Union to bargain on
4 their behalf exists only if PERC has jurisdiction. While the Union might be
5 affected by the ultimate outcome of this case, its interest is not direct."

6 *Spokane Cnty. v. State*, 136 Wash. 2d 644, 650, 966 P.2d 305, 308 (1998).

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8 (Emphasis mine.)

9 Similarly, while property owners in the Admiral's Cove Plat might eventually be
10 "affected" by the outcome of the litigation between ACBC and the Plaintiff, an
11 individual property owner's *interest* in the outcome of this lawsuit is not "direct" as that
12 term is used when considering this issue. It is the ACBC organization as a whole that
13 has a "direct interest" in the outcome of this lawsuit and that interest is being
14 adequately evaluated and protected by the current board of directors who are
15 collectively acting on behalf of ACBC.
16

17 Ms. Corliss attempts to characterize herself as a person with an interest that is
18 identical to the Plaintiff simply because they are each property owners within the Plat.
19 The difference between them, however, is that Mr. Wilbur is a party who is seeking
20 injunctive and declaratory relief against ACBC, an entity whose former board of
21 directors acted in a manner that was "ultra vires" and contrary to the association's
22 bylaws. Ms. Corliss, on the other hand, wants to intervene as a defendant and argue
23 the case for ACBC instead of allowing the board of directors to address the issues and
24 act on behalf of the association as a whole. The differences between the Plaintiff and
25 Ms. Corliss are substantial in that regard.
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27 While Ms. Corliss may not care for the fact that the board of directors or the
28 members may at some point vote to assess her property in furtherance of ACBC's
29 legal duty to maintain its swimming pool and related facilities, her remedy is a political
30 one that can be exercised at the next annual meeting when directors are elected. She
31 does not have a right to participate in this case when the ACBC board of directors is
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1 solely responsible for acting on behalf of the Association. Although a person's
2 "economic interest" in the subject matter of a lawsuit can be considered a "direct
3 interest" in some situations - that principle does not apply in this case. Ms. Corliss
4 does not have a *direct* interest in the subject matter of this lawsuit because the issues
5 are not directly related to economics. The Plaintiff has asked the court to enjoin
6 actions by ACBC and its board that are *ultra vires* and contrary to the bylaws.
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8 **The interests of all of the owners of property within the Plat of Admiral's**
9 **Cove are being very adequately represented by their elected board of directors.**

10 Even if the person seeking intervention demonstrates that the elements of
11 interest and impairment are satisfied, intervention as of right will be denied if the
12 interest is represented adequately by persons already parties. Lack of adequate
13 representation will be demonstrated if the interest is not currently represented at
14 all, or if the persons already parties have positions adverse to or divergent from
15 those of the intervention applicant.

16 14 Wash. Prac., Civil Procedure § 11:44 (2d ed.)

17 In the present case, the board of directors of defendant Admiral's Cove Beach
18 Club retained counsel and have been actively engaged on behalf of ACBC from the
19 time the case was filed. Since the issues in this case are almost exclusively related to
20 the scope of the board's authority and affirmative obligations in relation to the
21 association's purposes and bylaws, there is no party better qualified to defend the
22 Plaintiff's case on these issues than the entity itself. The proposed intervenor has
23 articulated no reason to allow the court to conclude that the board is not providing
24 adequate representation on the issues presented. Considering the court's earlier
25 rulings in connection with the motion for a temporary injunction, the board is
26 responding to the motion for summary judgment in the only reasonable manner that it
27 can.
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30 **The Proposed Intervenor's motion should be denied because of the**
31 **negative impact intervention will have on the timely disposition and costs of**
32 **this case.** The sufficiency of a would-be intervenor's claimed "interest" cannot be

1 determined in a vacuum. Rather, the court must in each instance, analyze and balance
2 the relative concerns of the affected parties -- not only of the proposed intervenor in
3 having his or her interest protected; but also those concerns affecting the right that the
4 current parties to the main action have in controlling their own lawsuit as well as
5 consideration of the public's right to have a judicial system that focuses on the efficient
6 resolution of controversies. See, *American Disc. Corp. v. Saratoga West, Inc.*, 81
7 Wn.2d 34, 42, 499 P.2d 869 (1972).
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9 If Ms. Corliss is allowed to intervene and have the court consider her response
10 to the motion for summary judgment, the case and its disposition will be substantially
11 delayed. Since the final disposition of this case will guide this board and future boards
12 in their decision making about how best to maintain and repair the swimming pool and
13 its related facilities, any delays in the final resolution of this case are very detrimental
14 to the association and its members. Undoubtedly, Ms. Corliss and her cohorts have
15 the effect of delay in mind as one of the strong motivators for her efforts to become a
16 party to this lawsuit. The delays and extra costs associated with a proposed
17 intervenor's request to participate in a lawsuit must be considered at the same time the
18 court evaluates whether the proposed intervenor has established a direct interest in
19 the resolution of the case.
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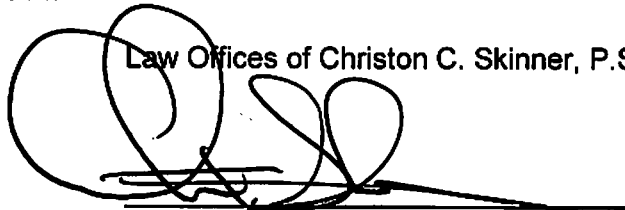
21 Ms. Corliss recites but one qualification to intervene as a defendant in this case
22 – her ownership of a lot in the plat of Admiral's Cove. Ms. Corliss suggests that she
23 should be permitted to participate in the litigation of this case as a defendant because
24 of that ownership interest and her distaste for the possibility that the board of directors
25 or the members might assess her lot to pay for the repair and upgrade the swimming
26 pool. If Ms. Corliss has a right to intervene as a defendant in this lawsuit for those
27 reasons, then by extension so would all of the approximately 600 members of the
28 Admiral's Cove Beach Club. If one club member is allowed to intervene and defend
29 the case alongside ACBC, it would be difficult to deny a request for the other 598
30 members who may want to participate. And, permitting each and every member of
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1 ACBC, or even 20% of them, to have a say in the outcome of this case would not be
2 conducive to the court's ability to provide for the efficient resolution of the matter nor
3 does such a scenario comport with our ever present concerns about judicial economy.

4 Simply stated, Ms. Corliss's intervention would be disruptive to the orderly
5 disposition of this case by itself and would very likely encourage other property owners
6 with varying opinions and beliefs to follow her lead. The motion to intervene is not well
7 taken and should be denied.
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10 Dated this 11th day of November, 2014.

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12 Law Offices of Christon C. Skinner, P.S.

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15 CHRISTON C. SKINNER/ #9515
16 Attorney for Plaintiff
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