

Honorable Judge Hancock

2/13/15 @ 8:30 am

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

INTERVENOR SUSAN CORLISS'
REPLY IN SUPPORT OF SUMMARY
JUDGMENT AND MOTION TO
DISSOLVE TEPMORARY
RESTRAINING ORDER

SUE CORLISS,

Intervenor,

v.

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

Defendants.

Plaintiff Wilbur has substantially changed his position in this case. Indeed,
he now repudiates the factual and legal basis upon which he argued for a
Temporary Injunction.

1 In his prior filings with this Court, Mr. Wilbur has repeatedly asserted that
2 he had an individual, enforceable property right in the perpetual operation of the
3 swimming pool. As only one example, as recently as his September 18, 2014
4 Declaration, Mr. Wilbur stated: “[M]y family and I were not only acquiring a
5 neighborhood-partnered interest in the property within the plat, but also ... a
6 beautifully located, competition-sized swimming pool – **all as part of our**
7 **ownership of the lot within the Plat of Admiral’s Cove.**” He repeatedly
8 asserted -- wrongfully, it turns out -- that the “original grant of deed for each parcel
9 of property ... conveyed both real estate and one family membership,” which
10 included the “swimming pool and other tracts.” He asserted: “The requirement of a
11 swimming pool is stated in these original deeds, which specifically mention the
12 pool.” Declaration of Bob Wilbur Re: Motion for Summary Judgment, September
13 18, 2014, ¶¶ 6-8. Mr. Wilbur’s property rights argument was a primary basis upon
14 which Mr. Wilbur sought, and received, a Temporary Injunction.

15 Intervenor has now shown that there is no evidence supporting Mr. Wilbur’s
16 claim of an individual, enforceable property right in the continued operation of the
17 pool. In response, **Mr. Wilbur has now repudiated this whole argument.** He
18 states: “I am not suggesting that I have an unalterable property right in the
19 perpetual operation of the swimming pool.” See Declaration of Bob Wilbur in
20 response to Corliss Cross Motion for SJ, at 8.

21 This is a very significant change in position. Mr. Wilbur’s argument that
22 he has an individual property right in the swimming pool was the basis for his
23 request for a TRO, for a Temporary Injunction, and for Summary Judgment. Yet
24 Mr. Wilbur now admits that he does not possess such an individual, enforceable
25 property right.

26 Plaintiff’s remaining argument is that the Articles of Incorporation and/or the
27 bylaws of the Club require the continued operation of a swimming pool. Yet as
28 discussed in prior briefing, the Articles of Incorporation say nothing whatsoever

1 about a swimming pool. On the contrary, the Articles make clear that the Club can
2 sell or dispose of any of the assets of the Club, which would obviously include the
3 swimming pool.

4 Mr. Wilbur repeatedly asserts that the swimming pool is the only
5 recreational asset of the Club. This is false. In fact, the most valuable and popular
6 recreational asset of the Club is the beautiful waterfront beach area which is owned
7 by the Club and available for use by members. The Club also maintains a covered,
8 open air barbeque and party area, an administration building, a basketball court, a
9 volleyball court, a children’s jungle gym playground, an outdoor fire-pit and picnic
10 area, and other facilities. See Shaak Declaration, ¶ 11. It is simply wrong to assert
11 the swimming pool was the sole and defining “purpose” for which ACBC was
12 formed, or that the swimming pool is the only – or even the primary – asset of the
13 Club.

14 Nor do the Club’s bylaws convey any substantive, enforceable rights to Mr.
15 Wilbur. Bylaws are procedural in nature, they are not substantive. Black’s law
16 dictionary defines a “Bylaw” as: “A rule or administrative provision adopted by an
17 association or corporation for its internal governance.” Black’s Law Dictionary,
18 Seventh Ed. Mr. Wilbur cites to no legal authority for the proposition that a set of
19 procedural bylaws could convey to him, as an individual member of the association,
20 a enforceable substantive right such as the one he claims here. Indeed, the Bylaws
21 make clear that the Club exists to serve its purposes “subject to the approval of the
22 members of the Club.” And as discussed in prior pleadings, these Club bylaws can
23 be changed at any time by simple majority vote. Nothing in the bylaws is
24 “perpetual.”

25 It is worth remembering that the Club Board engaged in a months-long
26 process of due diligence and investigation regarding the swimming pool. This was
27 entirely in keeping with prior Board resolutions calling for a study of the pool issue.
28 The Board commissioned and received professional evaluations and cost estimates

1 regarding the pool. It then used these as the basis for a vote, put out to the
2 members, to either decommission the pool or pay for the extensive required repairs.
3 A detailed FAQ document accompanied every ballot, explaining the basis for the
4 options presented and other details. With full awareness of the options and issues,
5 a majority of Club membership voted for an assessment to decommission the
6 swimming pool. Pursuant to the bylaws, which require a vote of the membership
7 for all special assessments, the membership had every right to make this vote. Mr.
8 Wilbur offers no concrete basis to conclude that this vote was faulty or improper.

9 Mr. Wilbur admits that his property rights argument lacks merit. His vague
10 arguments about the Articles of Incorporation and the bylaws likewise lack merit.
11 There is no factual or legal basis for Mr. Wilbur to force Club members to pay for
12 expensive repairs to the pool, against the wishes of the majority of the membership.
13 Accordingly, the Court should dissolve the present injunction and return this case
14 to the status quo in place at the time the injunction was entered. The prior, well
15 informed vote of Club members should be implemented.

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17 Respectfully Submitted,

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

1 **DECLARATION OF SERVICE**

2 On January 16, 2015, I, Jay Carlson, caused to be served a true and correct
3 copy of this Motion document, by electronic service as previously agreed among the
4 parties, to:

5 Christopher Nye
6 Attorney for Admirals Cove Beach Clum

7 Christon Skinner
8 Attorney for Plaintiff