

Honorable Judge Hancock  
11/17/14 @ 9:30 a.m.

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

REPLY OF SUE CORLISS IN SUPPORT OF  
MOTION TO INERVENE

SUE CORLISS,

Intervenor,

v.

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

Defendants.

**A. INTERVENTION IS TIMELY**

Binding case law is absolutely clear that an Intervention motion filed before trial is  
timely. “Here in Washington, a motion to intervene is timely if it is filed before the

1 commencement of the trial.” Columbia Gorge Audobon Society v. Klickitat, 98 Wn.App. 618,  
2 623, 989 P.2d 1260 (Wn.App. 1999) (citing American Discount Corp. v. Saratoga West, Inc., 81  
3 Wash.2d 34, 43, 499 P.2d 869 (1972)). “**This has always been the rule here.**” Id., (citing  
4 Colburn v. Spokane City Club, 20 Wash.2d 412, 415-16, 147 P.2d 504 (1944); Hight v. Batley,  
5 32 Wash. 165, 166, 72 P. 1034 (1903) (intervention not timely after appeal is filed)) (emphasis  
6 added). Plaintiff offers nothing to contradict this. The discussion quoted by the plaintiff from  
7 the Columbia Gorge case concerns intervention requests that come after a final ruling, such as  
8 during an appeal. Opposition at 7. Plaintiff offers nothing to contradict clear, binding case law  
9 holding that a CR 24 Intervention request is by definition timely if filed before trial, as this was.

10 **B. INTERVENTION IS JURISDICTIONAL**

11 Plaintiff’s declaration and brief devote much space to arguing the relative merits of the  
12 opposing positions in this case. For Intervention, this is irrelevant. The only question on  
13 Intervention is whether Ms. Corliss has an interest in the outcome of this litigation, and whether  
14 her interests are adequately represented by present parties.<sup>1</sup>

15 **1. Ms. Corliss clearly has an interest in the outcome of this litigation**

16 Here, her interest is clear. She has the exact same standing in this case, relative to both  
17 the Board and the swimming pool, as does Mr. Wilbur. As a property owner in the Cove, and a  
18 Member in good standing of the Club, she has exactly the same interest in the outcome of this  
19 case as does Mr. Wilbur. Moreover, in his present motion Mr. Wilbur is seeking relief that, if  
20 granted, will have a direct financial impact on every single Club Member, including Ms. Corliss.  
21 He is asking the Court for an Order *compelling* the Board to conduct very expensive repairs to  
22 the pool, and to generate and implement a budget, *including assessments against Members*, to  
23 pay for those repairs. This goes far beyond anything that has been requested before, and goes far  
24 beyond the TRO previously entered by this Court. It violates the Club bylaws on assessments,  
25 and undermines the principal of democratic decision-making that underlie those Bylaws.

26 As the Washington Practice Guide states, Intervention must be allowed when “the

---

27 <sup>1</sup> Mr. Wilbur’s statement that the 12 Declarants opposing Summary Judgment are “mostly former Board  
28 members” is simply untrue.

1 persons already parties have positions adverse to or divergent from those of the intervention  
2 applicant.” 14 Wash. Prac., Civil Procedure ¶ 11:44 (2d ed.). That is clearly true here. Mr.  
3 Wilbur is only one of approximately 600 Members of the Cove. He is asking the Court to  
4 impose an Order which will impact all Club Members, without a trial and without an evidentiary  
5 hearing. The Board, the only other present party, has told the Court that it does not oppose the  
6 request. Many Members, however, do oppose the request, as evidenced by the 12 Member  
7 Declarations filed in opposition. Their position is “adverse or divergent” from that of Mr.  
8 Wilbur and the Board. Such opposition should be heard, and Intervention is required for it to be  
9 heard.

10 **2. Ms. Corliss’ interests are not adequately represented**

11 Because the Board has decided that it can no longer take a position in this litigation, and  
12 that it does not oppose the current request for a Summary Judgment and a Permanent Mandatory  
13 Injunction, Cove Members who oppose Mr. Wilbur’s claims have no voice in this case. As  
14 discussed in the Motion, a majority of Cove Members voted to close the pool. They rejected the  
15 request for a large assessment to repair it, the very assessment Mr. Wilbur now seeks to impose  
16 by Summary Judgment. Although Mr. Wilbur alleged that there were problems with the vote, it  
17 did at least demonstrate that there is very substantial opposition to Mr. Wilbur’s claim in the  
18 600-strong Cove community.<sup>2</sup> The current parties are not representing that opposition in this  
19 case. That is obvious.

20 As Intervenor, Ms. Corliss is now the only party opposing Summary Judgment. 12 Cove  
21 Members filed Declarations supporting her opposition. Given the Board’s new stance in this  
22 case, allowing Intervention is the only way that these Interests will be represented.

23 **C. MR. WILBUR CONTRADICTS HIMSELF**

24 In this case, Mr. Wilbur has sued the Club Board alleging that it did not have the

---

25 <sup>2</sup> Mr. Dustin Frederick, former co-plaintiff with Mr. Wilbur, is now on the Club Board.  
26 Apparently, he has not recused himself from Board decision making related to the pool and he  
27 may be participating in Board communications regarding this litigation. See Corliss Declaration  
28 Opposing Summary Judgment, ¶ 32. This may help explain why the Club Board now feels it  
cannot take a position on this litigation.

1 authority to conduct a Member vote and choose to close the pool. Repeatedly, he has alleged  
2 that the Board does not possess authority to make decisions regarding Club facilities, and that  
3 these decisions – including the decision to decommission the pool -- were “ultra vires.”

4 Now, in arguing against Intervention Mr. Wilbur contradicts this entire concept of his  
5 own case. He now asserts: “The management of ACBC’s activities and the management of its  
6 commonly held assets is the sole responsibility of the organization’s board of directors.” He  
7 states that the Board of Directors “is exclusively authorized by ACBC’s bylaws to take action  
8 relative to the assets of the organization.” Plaintiff’s Opposition at 2. So when Mr. Wilbur  
9 disagreed with a Board decision regarding Club facilities, he filed suit asserting that they lacked  
10 legal the authority to make that decision. But when Mr. Wilbur agrees with the Board – such as  
11 their present decision to drop opposition to his lawsuit – he claims that only the Board has  
12 authority over Club facilities. Mr. Wilbur cannot have it both ways. Moreover, there is no  
13 showing as to why another individual Cove Member, who disagrees with the Board’s *current*  
14 decision, has no standing to come into this lawsuit. All Cove Members have exactly the same  
15 standing as it regards Cove facilities and the activities of the Board.

16 **D. MR. WILBUR’S BURDEN ARGUMENTS ARE SPECIOUS**

17 Mr. Wilbur argues that Intervention will impose burdens on this case. In his Declaration,  
18 he describes this as a “last minute” request in this “expensive and time consuming” case. He  
19 characterizes it as an “extreme and unreasonable waste of the court’s time.”

20 First, there is no legal basis for the Court to deny an appropriate Intervention request  
21 based on “burden.” Further, it is worth remembering that Mr. Wilbur, an individual property  
22 owner in the Cove, is the one who brought this lawsuit. It has indeed been burdensome on the  
23 Cove community, and it has generated substantial disarray within the Board itself. However, as  
24 the plaintiff who started this lawsuit, Mr. Wilbur is required to prove his claims in Court. To  
25 date, he has only requested a TRO. While it is understandable that Mr. Wilbur wants his  
26 Summary Judgment, his Declaratory Judgment, and his Permanent Mandatory Injunction, *and he*  
27 *wants it right now*, he still has to meet applicable standards of proof. He has to prove that there  
28 are no genuine issues of fact for trial. If there are issues of fact, the case has to proceed forward.

1 We submit that Mr. Corliss' Summary Judgment filing – including declarations of 12  
2 Club Members -- demonstrates the existence of numerous issues of fact. Mr. Corliss even  
3 presents a persuasive case for dissolving the current TRO. These are legitimate issues for  
4 litigation. It is not an unfair burden for the plaintiff to have to meet standards of proof applicable  
5 to all civil cases. This is not a basis for denying Intervention.

6 As to the claim that this is a “last minute” request, it was the Board’s recent decision to  
7 drop opposition to this lawsuit that prompted Cove Members such as Mr. Corliss to take a  
8 renewed interest in this case. When it became clear through recent filings that no one was  
9 opposing Summary Judgment, Ms. Corliss had a new and clear motivation to intervene. That is  
10 why the intervention request taking place now. There was no unreasonable delay. Moreover, as  
11 discussed above, by definition this request is brought timely.

12 The Court should not proceed to rule on Summary Judgment without at least considering  
13 the interests and arguments of those Club Members who oppose paying for repairs to the pool.  
14 They have exactly the same legal interest in the outcome of this case as does Mr. Wilbur. With  
15 Mr. Corliss’ filing, 12 Members have filed declarations opposing Summary Judgment. The  
16 Court should not enter a final dispositive Order without at least considering these arguments in  
17 opposition. The law compels Intervention here, and it should be allowed.

18  
19  
20 Respectfully Submitted

21  
22 

23  
24 \_\_\_\_\_  
25 Jay Carlson, WSBA 30411  
26 Attorney for Intervenor Susan Corliss

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CERTIFICATE OF SERVICE

Pursuant to CR 5(b), I certify that copies of this document were delivered to all parties or their counsel of record by mail, email, messenger, or facsimile.

DATED this 13<sup>th</sup> day of November 2014

*Joe Martinez*

Joe Martinez

Paralegal