

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF ISLAND

ROBERT WILBUR and DUSTIN  
FREDERICK,  
Plaintiffs,

vs.

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.

SUE CORLISS,

Intervenor,

vs.

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

Defendants.

NO. 13-2-00741-4

PLAINTIFF'S RESPONSE TO  
CORLISS CROSS MOTION  
FOR SUMMARY JUDGMENT

I. INTRODUCTION AND PROCEDURAL HISTORY

The Plaintiffs, Dustin Frederick and Robert Wilbur, commenced this action for "Declaratory Relief, Permanent Injunction and Damages" when he filed his complaint in this court on September 11, 2013. Plaintiffs each own residential real estate within

1 the plat of Admiral's Cove, located in Island County, Washington. By virtue of their  
2 ownership of property within this plat, the Plaintiffs are also members of Admiral's  
3 Cove Beach Club, a non-profit corporation that was created at the same time as the  
4 plat was created.

5 At the same time that the Plaintiffs filed their complaint, they also requested the  
6 entry of a temporary restraining order and order to show cause. The court entered the  
7 temporary restraining order on September 11, 2013, precluding the defendants from  
8 taking any action to decommission the swimming pool owned by Admiral's Cove  
9 Beach Club and from taking action to impose assessments against property owners  
10 within the plat for the purpose of decommissioning or removing the swimming pool and  
11 its related facilities.

12 The show cause order directed the defendants to appear on September 30,  
13 2013 to show cause why the temporary order should not remain in effect pending final  
14 disposition of the lawsuit. After the order was entered, the Plaintiffs and Defendants  
15 entered into several separate, stipulations to extend the restraining order and the date  
16 upon which the issues relating to the request for injunctive relief would be heard.

17 On December 30, 2013, this court considered the Plaintiffs' motion and the  
18 Defendants' opposition to it. The court was also asked to consider a motion by the  
19 Plaintiffs to have the named defendants held in contempt for violating the terms of the  
20 restraining order. At this hearing, the court considered the declarations of Robert  
21 Wilbur, Dustin Frederick and Gwyn Staton. The court also considered the declarations  
22 of some of the individual defendant board members in opposition.

23 At the conclusion of the hearing, the court rendered its oral pronouncement.  
24 The court denied the motion for contempt but determined that a factual and legal basis  
25 existed to enter the order granting a Temporary or Preliminary Injunction as provided  
26 in CR 65. The formal order, including findings of fact and conclusions of law, was  
27 entered on December 30, 2013. The order included the following findings and  
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1 conclusions:  
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3           22. *The purpose and objective of the Admiral's Cove Beach Club in*  
4 *Article II of its bylaws is to provide and operate recreational facilities for the*  
5 *benefit of the members and to procure, maintain, operate and protect the*  
6 *recreational and associated safety concerns of the members of the community*  
7 *of Admiral's Cove, subject to the approval of the members of the Club.*

8           23. *The Bylaws of the association clearly presupposed the existence of*  
9 *the pool, and any action taken that would decommission the pool would be*  
10 *contrary to the Bylaws.*

11           24. *Any assessments or special assessments levied for the purpose of*  
12 *decommissioning the pool would be contrary to the Bylaws of ACBC and should*  
13 *be enjoined.*

14           In addition to these specific findings of fact, the court determined that the Plaintiffs  
15 had "established a likelihood of prevailing on the merits for some or all of the relief  
16 requested in their complaint."

17           On March 5, 2014, Plaintiff, Dustin Frederick moved for the entry of an order  
18 granting voluntary dismissal of his claims against the defendants, without prejudice. That  
19 order was entered by agreement on March 17, 2014. Mr. Fredrick was elected to the  
20 board of directors of ACBC a few weeks earlier and elected to dismiss his cause of  
21 action against the defendants to avoid a conflict of interest.

22           On May 30, 2014, Plaintiff Robert Wilbur, moved to voluntarily dismiss the  
23 individual board member defendants pursuant to an agreement reached between the  
24 Plaintiff and those defendants. That order was entered on June 16, 2104.

25           On September 20, 2014, the Plaintiff filed his motion for summary judgment  
26 requesting the entry of a permanent injunction to preclude the Defendant, ACBC and its  
27 board of directors from decommissioning the swimming pool. The motion also seeks  
28 injunctive relief requiring ACBC to take the steps that may be necessary to obtain  
29 sufficient funds to properly repair, operate and maintain the swimming pool.  
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1 On November 17, 2014, this court granted Sue Corliss' motion to intervene as a  
2 party in this litigation.

3 The Plaintiff filed an amended motion for summary judgment around January 12,  
4 2015. Thereafter, Intervenor Corliss filed a "cross motion for summary judgment" which  
5 appears to request that the court deny the Plaintiff's motion and also which requests that  
6 the court dissolve the temporary injunction that is currently in effect.  
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8 The Plaintiff opposes the Intervenor's Cross Motion for Summary Judgment. In  
9 addition to the declarations submitted by Plaintiff in direct response to the Intervenor's  
10 motion, the Plaintiff is also relying upon the records and files in this case and the earlier  
11 filed declarations submitted in support of the Plaintiff's Motion for Preliminary/Temporary  
12 Injunction.

13 Hearings on the Plaintiff's motion for summary judgment and the Intervenor's  
14 cross motion are scheduled to occur on February 13, 2015.  
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## 17 II. ISSUES

18 A. Has the Intervenor identified any legal basis upon which the court can  
19 dismiss the Plaintiff's complaint as a matter of law at summary judgment?  
20

21 B. Is the Plaintiff required to name all property owners within the Plat of  
22 Admiral's Cove as defendants in his lawsuit seeking declaratory relief when those  
23 property owners and their interests are represented by Intervenor, Defendant,  
24 Admiral's Cove Beach Club ("ACBC"), and its board of directors?

25 C. Can the court enter injunctive relief that requires and directs the  
26 Defendant and its board of directors to repair and properly maintain a commonly held  
27 asset, i.e., the ACBC swimming pool and related facilities?  
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## 30 III. PERTINENT FACTS

31 The Admiral's Cove Beach Club is an association that was formed in 1969.  
32 ACBC is governed by a board of directors who are elected by and serve at the

1 pleasure of the membership. ACBC is not a Homeowner's Association because it  
2 permits non-owners to be members of the corporation pursuant to an "Associate  
3 Membership."

4 Article V of ACBC's Articles of Incorporation describes the corporation's general  
5 purposes, including the purpose "[t]o construct, install, maintain and/or operate athletic  
6 and recreational facilities of all types and kinds for benefit of the members."  
7

8 Article II of ACBC's Bylaws states that the object of the "Club" shall be to:  
9 "[p]rovide and operate recreational facilities for the benefit of the members;" and  
10 to "[p]rocur[e], maintain, operate and protect the recreational (and associated  
11 safety) concerns of the members of the community of Admiral's Cove, subject to  
12 the approval of the members of the club."

13 Although Article II of the Bylaws refers, generally, to the members' ability to  
14 "approve" procurement, operation, maintenance and protection of the recreational  
15 concerns, this general approval process does not permit the membership to alter the  
16 Corporation's "purposes" by a simple majority vote of the members. Any action of that  
17 nature requires a full two-thirds majority vote of the members at a meeting of the  
18 members called for that purpose.

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

20 Subject to limitations in the Articles of Incorporation and these Bylaws, and any  
21 applicable county, state, federal laws or regulations all powers of the club shall  
22 be exercised by or under the authority of, and the business and affairs of the  
23 club shall be controlled by the board of directors. (Emphasis supplied.)  
24

25 Section 2 of Article 8 provides that the board is responsible for maintaining and  
26 operating the properties and facilities owned by the club in accordance with the articles  
27 of incorporation and the bylaws. Section 3 of that Article provides that the board is  
28 authorized to "conduct, manage and control the affairs and business of the club..."  
29

30 The Plaintiff brought suit in this case against ACBC as an entity and the ACBC  
31 board of directors who were in office in September of 2013. At the time the action was  
32 commenced, the defendant board members were identified in the initial complaint as

1 Defendants Jean Salls, Marilyn Chamberlain, Karen Shaak, Robert Peetz, Elsa  
2 Palmer, Ed Delahanty and Dan Jones. A majority of this board attempted to  
3 decommission and demolish the swimming pool without proper authority and without  
4 the required approval of the members of ACBC. The defendant board members  
5 attempted to impose a special assessment for the demolition or decommissioning of  
6 the swimming pool, an action that was directly contrary to the stated purposes of  
7 ACBC and in contravention of the Plaintiff's right to have access to the swimming pool  
8 and related facilities. In addition, the defendant board members created a deceptive  
9 and misleading ballot for submission to the general membership in connection with the  
10 swimming pool "assessment." The board of directors then in office, failed to abide by  
11 and adhere to the express provisions of a motion that was unanimously passed by the  
12 members at their annual membership meeting conducted in 2012. Instead of following  
13 the provisions of a membership motion that passed unanimously, the board created a  
14 ballot that basically gave the members the choice if being assessed several hundred  
15 thousand dollars to renovate the pool or decommission it at a substantially lower cost.  
16 This ballot measure was contrary to ACBC's Bylaws but was submitted nevertheless.  
17 A little more than half of the members voted on this issue with 165 members choosing  
18 to be assessed at the lower number and decommission the pool. 153 members voted  
19 to upgrade the pool despite the substantial cost.  
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23 The Plaintiff's lawsuit sought to enjoin the Board's improper actions related to  
24 the swimming pool assessments and the efforts to decommission it. In connection with  
25 the filing of the initial complaint, the Plaintiff sought the entry of a temporary injunction.  
26 After a hearing at which the Defendant, ACBC and its individual board members  
27 participated and were represented by counsel, the court granted the request for a  
28 temporary injunction pending the final disposition of this case. In its oral ruling, the  
29 court made several, dispositive statements. For example, the court, in its oral ruling  
30 concluded the following:  
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1 "So it seems obvious that the Bylaws of the association clearly presupposed  
2 the existence of the pool, and any action taken that would decommission the  
3 pool would be contrary to the Bylaws.

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

10 It also seems obvious that the plaintiffs in this case, as members of the  
11 association, have a clear legal right to the continued operation and  
12 maintenance of the pool, a well-grounded fear of the immediate invasion of that  
13 right based on the Board's decision to follow the unauthorized vote to  
14 decommission the pool and impose a special assessment to do so, and they  
15 would be actually and substantially injured if the Board was allowed to proceed  
16 with these actions. Clearly, they have no adequate remedy at law in this  
17 connection either. So, again, by agreement, the restraint against the  
18 decommissioning of the pool is granted."<sup>1</sup>

19 Since the date of the entry of the court's order granting the Plaintiff's motion for  
20 a temporary injunction, a new board of directors was elected at an annual meeting of  
21 the membership. The new board replaced several of the members who were named  
22 as individual defendants in this lawsuit and who voted to decommission the swimming  
23 pool and assess members for the costs associated.<sup>2</sup>

### 24 III. LAW & DISCUSSION

#### 25 *Declaratory Judgment.*

26 RCW 7.24.010 provides:  
27  
28

29 \_\_\_\_\_  
30 <sup>1</sup> In making its decision to grant the temporary injunction requested by the Plaintiff, the court was  
31 mindful of the law in this state requiring that a court only issue a temporary injunction if it appeared from  
32 the record that the party seeking that relief was likely to prevail in the case in chief.

<sup>2</sup> 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.

1 Courts of record within their respective jurisdictions shall have power to declare  
2 rights, status and other legal relations whether or not further relief is or could be  
3 claimed. An action or proceeding shall not be open to objection on the ground  
4 that a declaratory judgment or decree is prayed for. The declaration may be  
5 either affirmative or negative in form and effect; and such declarations shall  
6 have the force and effect of a final judgment or decree.

7 RCW 7.24.020 defines the scope of declaratory relief as follows:

8 A person interested under a deed, will, written contract or other writings  
9 constituting a contract, or whose rights, status or other legal relations are  
10 affected by a statute, municipal ordinance, contract or franchise, may have  
11 determined any question of construction or validity arising under the instrument,  
12 statute, ordinance, contract or franchise and obtain a declaration of rights,  
13 status or other legal relations thereunder.

14 The Plaintiff is requesting that the court declare the property rights of Plaintiff  
15 insofar as those rights are affected by and flow from the recorded articles of incorporation  
16 and bylaws of the Admiral's Cove Beach Club. Specifically, does the Plaintiff have the  
17 right to expect that the board of directors of ACBC will act to preserve, operate and  
18 maintain the recreational facilities owned by ACBC, including the swimming pool, as long  
19 as the purposes and object for which ACBC was formed remain the same? In  
20 furtherance of the Plaintiff's request, he is also asking the court to specifically direct the  
21 board of ACBC to exercise its authority under the organization's bylaws to set dues and  
22 assessments in amounts sufficient to allow the swimming pool to be repaired, maintained  
23 and properly operated as originally intended.

25 RCW 7.24.030 specifically addresses a court's authority to construe contracts  
26 either before or after a breach has occurred. In the present case, both the bylaws and  
27 articles of incorporation are essentially contracts between the original incorporators of  
28 Admiral's Cove Beach Club and each member/property owner.

30 The Intervenor argues that the Plaintiff's action for declaratory relief should be  
31 dismissed because RCW 7.24.110 *requires* joinder of each and every member of ACBC  
32 (approximately 600 persons) as a party to this lawsuit before the court can adjudicate the



1 Plaintiff's request. That statute provides, in part that, "[w]hen declaratory relief is sought,  
2 all persons shall be made parties who have or claim any interest which would be  
3 affected by the declaration, and no declaration shall prejudice the rights of persons not  
4 parties to the proceeding."  
5

6  
7 A. Since a Complete Determination Of the Issues Raised by the Plaintiff Can  
8 Occur Without the Presence Of All 600 members of ACBC, This Court Has Discretion To  
9 Decide Whether To Require Their Joinder.

10 In *Williams v. Poulsbo Rural Telephone Ass'n*, 87 Wn.2d 636, 644, 555 P.2d 1173  
11 (1976), the Supreme Court held as follows:

12 If a complete determination can be had without the presence of other parties, then  
13 the right to bring them in is addressed to the sound discretion of the court.  
14

15 This principle applies under RCW 7.24.110. As previously discussed in Ms.  
16 Corliss' Motion to Intervene in this case, CR 19(a)(1) similarly requires joinder of a  
17 person if "in his absence complete relief cannot be accorded among those already  
18 parties." The primary issue in the instant case is whether the Board of Directors of ACBC  
19 can either decommission the swimming pool or refuse or fail to fund its maintenance and  
20 repairs given the stated purposes and object of ACBC in its Articles of Incorporation and  
21 Bylaws.  
22

23 Now that Sue Corliss has been joined in this matter to essentially represent any  
24 member of the association who may be opposed to the Plaintiff's position, this court can  
25 completely determine these issues and the court has discretion to refuse to require  
26 joinder. See also *Town of Ruston v. City of Tacoma*, 90 Wn.App. 75, 82, 951 P.2d 805  
27 (1998); *Martire v. Borjessan*, 19 Wn.App. 556, 559, 577 P.2d 596 (1978) (where issue of  
28 party to be joined is "collateral" to the primary issue in the case, the court may render  
29 complete relief in the absence of that party).  
30

31 B. In a Declaratory Judgment Action, Joinder Is Not Required Where the Interests  
32 Of the Absentee Parties Are Adequately Represented.

1 The rule requiring joinder in declaratory judgment actions is designed to  
2 guarantee that the interests of the absentee party or parties will be adequately protected.  
3 Where those interests are protected by existing parties, joinder is not required. The case  
4 of *Primark, Inc. v. Burien Gardens Assocs.*, 63 Wn. App. 900, 823 P.2d 1116 (1992)  
5 involved a lawsuit to determine whether a strip of land had become a county road by  
6 prescription. The party opposing the road designation argued that a Mr. Scheda, a  
7 person who had used the road since 1946 and sold it to Primark, had to be joined under  
8 the Declaratory Judgments Act, RCW 7.24.110, because he had an interest in access to  
9 the road. The court disagreed, saying that “dismissal may not be required for failure to  
10 join. . . if the interested parties have a designated representative.” *Id.* at 907. The court  
11 held that joinder was not required because the interests of Primark were aligned with the  
12 interests of the Mr. Scheda, that “Primark is, in effect, standing in Scheda’s shoes.”

13  
14 Similarly, in *Town of Ruston, supra*, the City argued in a land ownership dispute  
15 that the case should be dismissed because the Town had failed to join the current and  
16 former owners of the property as well as the residents of Ruston and Tacoma. The court  
17 first observed that, where a claim as to property ownership can be resolved without the  
18 non-parties, the court had discretion as to whether to require joinder, holding that neither  
19 property owners nor residents had to be joined under RCW 7.24.110. The residents were  
20 neither necessary nor indispensable parties where the two municipalities already  
21 represented them, while the owners were not necessary because “[a]lthough the legal  
22 relationships between these two entities and the municipalities might change as a result  
23 of this action, such changes are speculative and secondary to the issue at hand.” 90 Wn.  
24 I App. at 82.

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26  
27 Ms. Corliss successfully intervened in this case under the primary theory that the  
28 defendant board of directors was not aggressively resisting the Plaintiff’s request for  
29 declaratory relief and injunction. Now that Ms. Corliss has been permitted to appear in  
30 this case and represent the “pool opponents,” each dimension of this “controversy” is  
31 before the court in a representative capacity. The board is appearing in its capacity as  
32

1 the elected, governing body of the association that will be directly affected by the court's  
2 ruling, Mr. Wilbur is seeking a determination that property owners within the plat of a right  
3 and expectation in the continued repair, maintenance and operation of the pool, and Ms.  
4 Corliss "represents" those parties with views opposing Mr. Wilbur's.

5 Since all potential interests are adequately represented through the three parties,  
6 it appears the real purpose for Ms. Corliss's request that each and every owner in the  
7 plat be named as a party, is to try and make this litigation so cumbersome and costly that  
8 it becomes impractical for the Plaintiff to proceed. That result is not what the statute or  
9 the decisions interpreting it require under these circumstances.

10  
11 C. Even If the Court Required All Owners to Be Named As Parties, Immediate  
12 Dismissal is Not Warranted. Ms. Corliss' argument that this court should dismiss  
13 Plaintiff's claims is misplaced. The cases construing RCW 7.24.110 and CR 19 do not  
14 permit immediate dismissal for failure to join a necessary or indispensable party.  
15 Instead, the court must require joinder within a specified period of time (usually 90  
16 days). The case may be dismissed if joinder is not obtained within the time  
17 period. *Treyz v. Pierce County*, 118 Wn. App. 458, 464, 76 P.3d 292 (2003), rev.  
18 den. 151 Wn.2d 1022, 91 P.3d 94 (2004) citing *Henry v. Town of Oakville*, 30 Wn.  
19 App. 240, 246, 633 P.2d 892 (1981), rev. den. 96 Wn.2d 1027 (1982) and *Williams*,  
20 *supra* at 649. *Treyz* and the other cases cited above construe RCW 7.24.110.

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24 ***ACBC's Articles of Incorporation Do Not Authorize the Board of Directors to***  
25 ***Decommission the Swimming Pool.***

26 The Intervenor suggests that Article V, paragraph 5 of ACBC's original Articles  
27 of Incorporation is dispositive of the issues in this case because it grants authority to  
28 the corporation to "sell or convey" and "transfer and dispose" of all or any part of the  
29 corporation's assets and property. This argument is incorrect and fails to take into  
30 account the other, superseding provisions of the Articles and Bylaws. While the  
31 corporation may be authorized to sell, transfer, or dispose of its assets in the ordinary  
32



1 Unless and until the corporate purposes and object of ACBC are changed by a  
2 two thirds vote of the membership, as provided in the Articles of Incorporation, no  
3 action by the board should be permitted which has the effect of decommissioning the  
4 ACBC swimming pool. Similarly, the Board of Directors should be permanently  
5 enjoined from taking any action to assess the membership for the purpose of raising  
6 funds for removal or decommissioning the swimming pool since doing so is contrary to  
7 the bylaws of the corporation. In addition, the board should be required to take the  
8 steps necessary to properly fund the repair, maintenance and operation of this facility,  
9 including the imposition of assessments, so that the neglect and failure to act  
10 attributable to previously elected boards, does not result in the removal or destruction  
11 of the pool.  
12

13 Dated this 2 day of February.  
14

15  
16 Law Offices of Christon C. Skinner

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19 CHRISTON C. SKINNER #9515  
20 Attorney for Plaintiff  
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