

Hon. Alan R. Hancock
Hrg: 3/23/18 9:30

**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**
Defendant.

NO. 13-2-00741-4

**DECLARATION OF ROBERT
WILBUR IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT**

SUE CORLISS,
Intervenor,
vs.
**DUSTIN FREDERICK, ROBERT
WILBUR, ADMIRAL'S COVE BEACH
CLUB, a Washington non-profit
corporation, and its BOARD OF
DIRECTORS.**
Defendants.

**UNDER PENALTY OF PERJURY AND PURSUANT TO THE LAWS OF THE
STATE OF WASHINGTON, I CERTIFY THAT THE FOLLOWING IS TRUE AND
CORRECT:**

My name is Robert Wilbur and I am one of the Plaintiffs in the above captioned case. I am over the age of 18 years and competent to be a witness. I have personal knowledge of the facts set forth in this declaration.

**DECLARATION OF ROBERT WILBUR IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT**
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**LAW OFFICES OF
Christon C. Skinner P.S.**
791 SE Barrington Drive
Oak Harbor WA 98277
Tel. (360) 679 1240 · Fax (360) 679 9131

1 This declaration is submitted in support of my Motion for Summary Judgment
2 on the question of whether the 2016 vote of the membership to retain and repair the
3 Admirals Cove Beach Club ("ACBC") Swimming Pool supersedes the vote that was
4 improperly cast at the membership's 2013 annual meeting.

5 In addition to the information that has been provided about what occurred at the
6 annual meetings of the ACBC membership in 2013 and 2016, I would like the court to
7 know what occurred at the annual membership meeting that was conducted on
8 January 27, 2018. Among a variety of agenda items, the membership was asked to
9 consider whether to send out a ballot to all members of the association asking them to
10 vote, once again, on the question of whether to affirm a special assessment to repair
11 the swimming pool; or decommission it. When that matter was submitted to the
12 members at the meeting, the motion failed.

13 When the annual meeting of the membership was called to order on January
14 27, 2018, there were 84 voting members in "good standing" present, either in person
15 (73) or by proxy (11). There were also 26 non-voting member households present who
16 were not in good standing.

17 According to the ACBC bylaws, only members in "good standing" are permitted
18 to vote at the annual meeting of the ACBC membership. This is well understood
19 throughout the membership.

20 At the January 27 meeting, a motion was made by Mr. Derek Lind for the Board
21 of Directors to invalidate the 2016 ballot that approved a special assessment to repair
22 the ACBC swimming pool. The motion by Mr. Lind also asked the voting members to
23 approve the submission, via U.S. Mail, of another ballot to be sent out in early 2018 in
24 which the members would be asked to once again approve or deny the assessment to
25 fund repairs to the Club's pool. The specific language of Mr. Lind's motion stated:

26 "I move to repeal the 2016 vote for the special assessment to refurbish the
27 pool. The materials provided in the 2016 ballot packet contained incorrect
28 information about the Court ruling, and that erroneous information unfairly
29 influenced how members voted. The Board shall conduct a mail-in ballot sent to
30 all property owners in Admirals Cove. The ballot shall be distributed within 30
31
32

1 days of the passage of this motion and ballots must be counted within 30 days
2 of their distribution.”

3 The motion was seconded. During the discussion of the motion made, an
4 amendment to the motion was made to change the window of time for submission of
5 the mailed ballot from 30 to 90 days to allow members who were not in good standing
6 to take action to become “members in good standing” and thus eligible to vote. The
7 Board of Directors, compliant with the Bylaws and Roberts Rules of Order, called for
8 the eligible voters attending the meeting to vote on the amendment. The vote was a tie
9 (28 to 28), which under Roberts means the amendment failed. (I am not sure why all of
10 the members in attendance and eligible to vote did not vote on this proposed
11 amendment to Mr. Lind’s motion.)
12

13 The original motion with the 30-day window of time for submission of the ballot
14 was then voted on and failed by over a 2-to-1 margin of the eligible voters (48 to 22).
15 The motion, amendment, and voting tallies are delineated in the approved minutes of
16 the meeting, a copy of which is attached to the declaration of Mike Tenore, the ACBC
17 secretary.
18

19 Again, I do not know why all 84 eligible voters attending the meeting did not
20 vote on Mr. Lind’s motion as presented. Some may have left by the time the motion
21 was made near the end of the meeting. Others may have refrained from voting due to
22 uncertainty.
23

24 The Bylaws specifically state that to be in good standing a member must be
25 current in their account (Article III, Section 2) and must be in good standing in order to
26 vote (Article V, Section 1). Some members who were not in good standing complained
27 loudly about being “disenfranchised” by the Board. Some argued they had paid their
28 dues but did not know they had to pay the assessment as well. However, members
29 who had not paid the assessment were billed for the assessment in mid-August 2017
30 billing statement (see attachment). That statement clearly states (Notice Box #3 & #4)
31 that payment was due in full within 30 days.
32

1 Since all members are provided with a copy of the bylaws when they acquire
2 their property, association members knew or should have known that, to be in good
3 standing and therefore eligible to vote at meetings of the membership or on ballots, the
4 member must be paid up on all dues and assessments (or current on a payment plan).

5 In any event, even if all the 26 member households "not in good standing" had
6 been allowed to vote and all 26 voted for the proposed new (2018) pool ballot motion,
7 the motion still would have failed since those additional votes would not have
8 overcome the members who opposed the motion.
9

10 If any question remained about the validity of the 2016 membership decision to
11 approve a special assessment to repair the ACBC swimming pool and related
12 facilities, the action taken by the members at the January 27, 2018 annual meeting
13 reaffirms the membership's intent to proceed with the 2016 vote to refurbish the ACBC
14 pool – regardless of what may have been presented in the ballot package provided to
15 members in 2016.
16

17 I respectfully request that the court confirm the 2016 decision of the
18 membership to approve a special assessment for the repair of the ACBC swimming
19 pool and related facilities and further determine as a matter of law that this decision
20 supersedes the vote that was submitted to the members in 2013. Additionally, or in
21 the alternative, I ask that the court conclude that 1) the 2013 ballot was invalid and
22 contrary to the ACBC bylaws because it did not include an option of rejecting each or
23 both of the special assessments that were presented; and 2) that the vote of the
24 members at the 2018 annual membership meeting conclusively affirmed the decision
25 to impose a special assessment made by the membership and 2016 and that both
26 decisions supersede the action taken at the 2013 membership meeting, regardless of
27 the validity of the ballot.
28

29 Dated this 22 day of February, 2018, at Oak Harbor, Washington.
30

31 
32 _____
ROBERT WILBUR

Admirals Cove Beach Club

PO Box 366
Coupeville, WA 98239-0366

ACBC Dues & Fees Statement

To:

Coupeville, WA 98239-9722

Payment Plan payments are due by the 20th of each month.	
Terms	Date
Net 30	8/15/2017
Amount Due	Account #
\$1,000.00	

Date	Transaction	Amount	Balance
12/31/2016	Balance forward		1,000.00
09/14/2017	Amount Due		1,000.00

NOTICES: (1) Payments will be applied to past dues & finance charges (late fees & interest charges) first. (2) Finance charges will be waived for payments received by ACBC on or before 08/15/2017 but not yet posted to your account at time of statement printing. (3) The 2016 pool assessment is now due in full 30 days from the date of the statement and finance charges will be applicable after the 30 days. (4) Pre-arranged payment plans may be cancelled if the payment schedule is not met.

CONTACT INFORMATION:

Member Services Phone: (360) 678-5002

Pool Office at (360) 678-5001 (swim season only)

QUESTIONS: For questions about your account or to make confidential alternate payment arrangements, contact Member Services or see acbc-whidbey.org for additional contact information.

We do not send out monthly statements, so you are responsible for timely payments.

For periodic payments, we highly recommend setting up automated payments through your bank.

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Mail to:

Admirals Cove Beach Club
PO Box 366
Coupeville, WA 98239-0366
Member Service: (360) 678-5002

RE: Balance Due **\$1,000.00**
Amount Enc. Statement Date **8/15/2017**

Coupeville, WA 98239-9722

**ADMIRAL'S COVE BEACH CLUB
BYLAWS**

SECTION 2: GOOD STANDING

To be in Good Standing a Member must be current in their accounts and not have been suspended. Tenants will be considered in Good Standing if their property owner (Member) is in Good Standing.

SECTION 3: ADDRESSES FOR NOTIFICATION

Every Member shall furnish the Club with a current postal address to which notices of meetings, bills for dues and assessments, and all other matters, may be mailed or served to the member. Each Member has the option of also providing a current email address to which such notices, except for bills for dues and assessments, may be provided to the Member, and the Member shall then indicate whether postal or email address is their preferred method of receiving such notices.

SECTION 4: ENTITLEMENT TO CLUB PRIVILEGES

Members, their Tenants and Associate Members are entitled to privileges of the club if they are in Good Standing, subject to the rules adopted by the Board of Directors. In addition, families of the above (defined as parents, grandparents, children and grandchildren and their spouses/partners) are entitled to privileges of the Club. Other people will be considered "invited guests" and may receive privileges of the Club when accompanied by one of the above, provided that all guests shall be required to pay fees for the use of the swimming pool as determined by the Board of Directors. Members Not in Good Standing are not permitted to use the club facilities individually or as a guest of someone in Good Standing.

SECTION 5: TERMINATION BY SALE OR TRANSFER OF PROPERTY

Active Membership shall be appurtenant to the lot or lots owned or being purchased by the members. Upon the transfer of membership or making of a contract for the sale of any lot, the membership appurtenant thereon shall be deemed to be transferred to the contract purchaser or grantee. No membership may be conveyed or transferred in any other way. In the event of the death of a member, his membership shall pass in the same manner and to the same persons as does the real property itself. No compensation shall be paid by the Club upon any transfer of membership and no member whose membership is transferred shall thereafter be entitled to any member benefits.

ARTICLE IV - MEMBERSHIP MEETINGS

SECTION 1: ANNUAL MEMBERSHIP MEETING

Meetings of the members shall be held at least once a year at such a place or places as shall be designated by the Board of Directors. Unless otherwise ordered by the Board of Directors, the Annual Meeting of the members shall be held on the fourth Saturday in the month following fiscal year-end unless such date falls on a legal holiday, in which case the meeting shall be held on the next succeeding Saturday which is not a legal holiday.

SECTION 2: SPECIAL MEETINGS

Special meetings of the membership may be called by the President, Board of Directors, or by a request in writing of not less than one-twentieth (1/20th) of all members entitled to vote. The purpose of the meeting shall be stated in the call.