

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

ROBERT WILBUR and DUSTIN
FREDERICK,

Plaintiffs,

NO. 13-2-00741-4

vs.

DECLARATION OF ROBERT
WILBUR IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT

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.

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

1. 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. This declaration is submitted in support of my motion for Summary Judgment. The only remaining Defendant in this case is Admiral's Cove Beach Club. The individual members were dismissed by agreement. Accordingly, my motion seeks the entry of a summary judgment order affecting the rights and obligations of defendant Admiral's Cove Beach Club and its governing body, i.e., the board of directors collectively.

DECLARATION OF BOB WILBUR RE:
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

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2. I purchased a lot within the Plat or Tract of Admiral's Cove on March 6, 2006. I am a member of Admiral's Cove Beach Club.
3. The Admiral's Cove Beach Club was formed to promote and maintain "recreational activities." Since the only recreational facility in existence at the time was the Admiral's Cove swimming pool, I believed that the pool would be maintained by the association and its governing body for as long as I owned the lot – as well as be an continuing asset to a buyer(s) of the property. Admiral's Cove Beach Club ("ACBC") was formed on June 2, 1969. ACBC was formed for the principal purpose of providing and operating recreational facilities, which specifically included the community pool, for the benefit of its members, and to procure, maintain, operate and protect recreational opportunities for the members of the community per Article II of the ACBC Bylaws.
4. The primary recreational asset owned by ACBC is a large lap (Competition-sized) swimming pool and pool building/locker room/lavatory located on property owned by ACBC. Article XII of the Bylaws provides for two standing committees with direct responsibilities to the pool (the Pool Operations and Safety Committee and the Pool Maintenance and Improvement Committee) and a third committee with broad responsibilities for planning facility enhancements including the pool and pool building (Long Range Planning and Building Committee).
5. The Plat of Admiral's Cove consists of Divisions 1 through 7, and the property owners within this plat are entitled, by virtue of their ownership, to a membership in the non-profit corporation known as Admiral's Cove Beach Club, which includes a pool. The binding agreement entered into December 15, 1969, between Admiral's Cove, Inc., and Admiral's Cove Beach Club conveyed "real property including the swimming pool and facilities located thereon to Club [Admiral's Cove Beach Club]."

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6. One of the compelling factors related to my purchase of my property within the ACBC plat was the fact that my family and I were not only acquiring a neighborhood-partnered interest in the property within the plat; but also certain beach rights, common areas, recreational areas and a beautifully located, competition-sized swimming pool – all as part of our ownership of the lot within the Plat of Admiral’s Cove.
7. The original grant of deed for each parcel of property within the Admiral’s Cove plat conveyed both the real estate and “one family membership in Admiral’s Cove Beach Club, Inc. (sic), a Washington nonprofit corporation, which will own and maintain certain beach rights, recreational areas, **swimming pool** and other tracts, as shown on plat of Admirals Cove... .”
8. The requirement of a swimming pool is stated in these original deeds, which specifically mention the pool.
9. No other recreational facility is specifically mentioned, and the pool is (and since the inception of ACBC has been) by far the only significant and capital-intensive recreational/athletic facility provided by ACBC. The Articles, the Bylaws, and the deeds PRESUME the continuation of a community swimming pool and the pool is the cornerstone of the community recreation.
10. The ACBC Articles of Incorporation provide that the purpose of Admirals Cove Beach Club is to “construct, install, maintain and/or own and operate athletic and recreational facilities of all types and kinds for the benefit of the members.” The club’s swimming pool is the centerpiece of the athletic and recreational facilities, and the ONLY athletic facility of appeal to and practical use by all ages, from the very young to aging seniors, and as such promotes families and community members the opportunity to share recreation and social intercourse, as provided in Article V, ¶ 2. The only lavatory facilities are located in the pool building, further conveying a presumption of a continued presence and existence of the pool and its central importance.

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- 11. Purchasers of real estate located in Admiral's Cove were on "notice" about the content of the ACBC Articles and Bylaws because the Articles and Bylaws are filed with the auditor and "of record" in Island County, Washington. The original Articles and Bylaws were recorded in Island County, Washington in 1969 and the Bylaws were re-recorded in 1986. Because of the conditions set out in the recorded bylaws and articles, all property owners are obligated to participate in the pool's repairs, rehabilitation and future maintenance. See Article V. ¶1 and ¶8 of the Articles of Incorporation.
- 12. ACBC is governed by a board of directors who are elected by and serve at the pleasure of the membership.
- 13. The swimming pool and building and associated lavatory/locker facility is in need of substantial maintenance, repair and renovation. Part of the reason that substantial repair and maintenance is needed is the fact that previously elected boards of directors failed or refused to levy special assessments or set dues high enough to cover the real maintenance and operational costs of the swimming pool.
- 14. At the 2012 annual member meeting, a motion was unanimously approved by the membership that provided that two standing ACBC committees (the Pool Maintenance and Improvement Committee and the Long Range Planning and Building Committee) were to identify and evaluate various rehabilitation options relating to the pool and the pool building, and to recommend the best rehabilitation options. The members' Motion charged these committees with three tasks The Motion is part of the record.
- 15. The Motion provided that the committees would investigate and develop repair and refurbishment plans along with payment options related to assessment costs and financing. The Motion also provided that the committees shall submit findings to the Board and "subsequently work with the Board to develop an

1 appropriate ballot". The Board that was then in office failed to honor and
2 comply with all of the Motion-specified tasks.

3 16. The Motion that was passed had no provision or contingency regarding
4 "decommissioning" of the swimming pool.

5 17. The Bylaws clearly presuppose the existence of the pool, and any action taken
6 that would decommission the pool would be contrary to the Bylaws, the Articles,
7 and the deeds. Thus, any assessments or special assessments levied for the
8 purpose of decommissioning the pool would be contrary to the Bylaws, Articles,
9 and deeds of ACBC and thus void.

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11 18. The majority of the Board of Directors of ACBC then in office, honored neither
12 the letter nor the spirit of the Motion through their actions. Specifically, the
13 Board submitted a ballot to the membership which contravened the Motion.
14 The ballot was plainly inconsistent with the October 27, 2012 Motion since its
15 focus was on decommissioning the swimming pool and not means for
16 preserving and maintaining it.
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19 19. By allowing the membership to determine whether or not to fund needed
20 maintenance, past Boards of Directors have also failed to discharge their
21 fiduciary responsibilities to ACBC members by failing to require sufficient
22 annual dues or special assessments to cover ACBC's property maintenance
23 and repair needs.
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25 20. The former Board's actions over the written objections of members of the two
26 committees charged to work with the Board to prepare the pool ballot (per the
27 October 2102 motion) demonstrated an intent to demolish or decommission the
28 swimming pool in spite of the inconsistency of such action with the Articles and
29 Bylaws of ACBC.
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31 21. In the early summer of 2012, various maintenance and operational issues
32 caused the pool to be opened for a short period and then closed. The Board

1 acquired information from various sources on repairs and cost estimates. Talk
2 began among members of ACBC and the Board about the need for a special
3 assessment to bring the pool up to standards. Arguments arose about whether
4 all repairs were needed at once and whether the need for repair was inflated.
5 Also, members disagreed about whether repairs and upgrades should be
6 spread over several years or so or had to be done in one project.
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8 22. In September 2012, the formerly elected Board held three town hall style
9 meetings to explain the repairs needed and to take suggestions. At the two
10 meetings I attended, I suggested formation of an ad hoc committee of both "pro
11 pool" and "anti pool" members and Directors to examine the costs of repair and
12 maintenance and to develop a plan going forward. The suggestion had wide
13 support, but four members of the Board clearly were not interested and kept on
14 their path to put their vision and assessment to a vote.
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16 23. The previously elected Board's failure and refusal to take steps to involve
17 concerned members with an opportunity to develop options and solutions
18 beyond the destruction and removal of the swimming pool prompted a
19 movement among pro-pool members to attend the October annual meeting of
20 ACBC in sufficient numbers to constitute a quorum. At the annual meeting, a
21 motion was introduced to create an ad hoc committee to determine costs,
22 examine funding options, and to develop an assessment ballot for the Board to
23 advance to the general membership. The motion, at the behest of board
24 member, Daniel Jones, was softened and tweaked a bit at the meeting, but the
25 main mission remained in force and was passed unanimously by those in
26 attendance.
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28 24. The passed motion had two pool committees assigned to handle the three
29 tasks. Katherine Harris was appointed to chair the Pool Maintenance
30 Committee. She was slow calling for a meeting, the first being two months after
31 the October motion. The meeting, Friday a.m., December 28, was announced
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1 seven days prior without any attempt to arrange with others' schedules. Only
2 four of the ten members were able to attend. Ideas and strategies were
3 discussed, and there was an expectation of further discussion and decisions to
4 be made at a subsequent meeting.
5 25. However, at the January 12, 2013, board meeting, Katherine and the Board
6 announced plans to get architects and pool experts involved. At that point
7 Katherine and the Board took over the entire gathering of cost estimates,
8 essentially co-opting and usurping the work that was supposed to have been
9 done by the committee approved and desired by the membership.
10 26. On January 22, 2013, Katherine announced the second meeting of the pool
11 committee for January 27, 2013 (six days' notice) without any attempt to
12 arrange an acceptable time and date for other members. Only four members
13 were able to be there on a Sunday morning. Basically, from here on, the Board
14 and Katherine took over the task of developing the costs, and there were no
15 further meetings of the Board or the committees until after Katherine's "work"
16 was completed.
17 27. On March 28, 2013, Katherine announced that the final meeting of the Pool
18 Maintenance Committee was going to be on April 11, 2013. She stated that this
19 meeting was to include nearly all the Directors and that the architect's and "pool
20 expert's" findings would be presented for review just two days before a
21 scheduled meeting of the Board of Directors.
22 28. By mid April of 2013, it became quite clear that Katherine would ignore the
23 second and third charges of the Motion (examination of funding options and
24 subsequent ballot development). She simply turned the task of developing the
25 ballot language over to the Board, and she held no further committee meetings..
26 29. Numerous requests followed in late April and early May for committee
27 involvement to examine the two remaining committee tasks: funding options for
28 the preservation of the pool and developing an assessment ballot on that
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1 subject. Some committee members finally opted to hold an independently called
2 meeting (May 3) to be attended by whoever could come to discuss those
3 objectives. Dan Jones, Suzy Palmer, Sue Corelis, Fred Salmon, Maria
4 Chamberlain and Bob Wilbur attended. The meeting and follow-up emails
5 relaying the meeting's results did nothing to persuade the Board to provide the
6 pool committees an opportunity to participate in developing the ballot as
7 mandated by the membership at the October meeting.
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9 30. By May 7, 2013, the ballot had been prepared by the Board, without input from
10 the committees and in a manner that was completely contrary to the intention of
11 the membership as expressed by the vote taken in October. Shortly thereafter,
12 the Board's version of the ballot was sent out to members. It was prepared
13 independently, excluding participation of two pro-pool Directors and one neutral
14 director.
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16 31. The ballot phrased the members' decision in a way that suggested that
17 members could vote for a less costly assessment to remove the pool; or a
18 significantly higher assessment to restore and repair it. No middle ground or
19 other options were provided.
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21 32. After the former Board of Directors submitted the aforementioned ballot to the
22 membership, they (the association members) voted 166 to 153 to authorize an
23 estimated \$200,000 assessment to remove the pool rather than vote to assess
24 \$650,000 to retain it. The manner in which this vote was handled allowed an
25 easy opportunity for the former board members – or anyone else - to tamper
26 with the votes; it did not provide an opportunity to vote "no" for either
27 assessment amount; it did not provide specifics about financing possibilities and
28 options, and in several areas was inconsistent with the club's governing
29 documents. All of these issues could have been avoided had the Board worked
30 with the two appointed committees as directed by the October 2012 unanimous
31 vote of the members.
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33. The swimming pool is the only recreational facility of any significant value that is owned by the Admiral's Cove Beach Club. Its removal would be contrary to the purposes of the association and the membership's property rights and interest in the pool as a community asset.
34. On December 30, 2013, this court entered a temporary injunction and order that precluded the Board of Directors of ACBC from taking any action to decommission or remove the swimming pool, from attempting to levy a special assessment to pay for the costs of decommissioning, and from taking action regarding the swimming pool that was contrary to the court's finding that the association's purpose included the operation and maintenance of the swimming pool facility.
35. On January 11, 2014, four members of the Board of Directors who had been involved in the decision to try and decommission the swimming pool were voted out of office. Since that time, the new board has attempted to develop a ballot to submit to members of ACBC that addresses the need to provide for maintenance and repair of the swimming pool in a manner this is consistent with the court's earlier rulings in this case and the Articles of Incorporation and Bylaws. However, without this court's final decision on my request for declaratory relief and a permanent injunction, the Board of Directors has been unable to confidently move forward with a proposed ballot and vote of the membership on these issues.
36. The court should enter an order that permanently enjoins the ACBC board of directors, as presently constituted or as elected in the future, from taking any action or failing to take action, that would result in the removal, decommissioning, damage or destruction of the ACBC swimming pool unless the purpose of such removal was to make way for the construction or installation of a new pool facility.

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37. The only exception to an order of the nature I am requesting would be if two thirds of the members affirmatively voted to change the purpose of the Association and that purpose did not include the operation of a recreational facility for the members. The option to change the Association's stated purpose from that which was originally established could only occur if the members and the board abide by the terms of Article V of the Articles of Incorporation.

38. Many of the persons who purchased lots within the plat received deeds conveying title to their lots with an express reference to an the swimming pool and related facilities contained in the language of the deed. If the court does not permanently enjoin the board from taking action in the future that removes the swimming pool or that is designed to allow it to degrade, the Association will be subjected to lawsuits and title claims from persons who relied upon the existence of the pool and its perpetual existence when purchasing their property. An example of the deed language used to convey lots within the Admiral's Cove Beach Club plat is set out below:

TOGETHER WITH one family membership in Admiral's Cove Beach Club, Inc., a .Washington non profit corporation, which will own and maintain certain beach rights, recreational areas, swimming pool, and other tracts, as shown on plat of Admiral's Cove, and the grantors warrant that all. dues, assessments and charges for maintenance of and upkeep of said Beach Club properties and facilities to October 15, 1969, have been paid or will be paid by the Grantors.

This deed language was included in the deed provided to Gwyn Staton, a person who previously submitted a declaration in this case. The pertinent portion of the deed is attached as Exhibit A to the declaration of Gwyn Staton filed in this case on September 11, 2013.

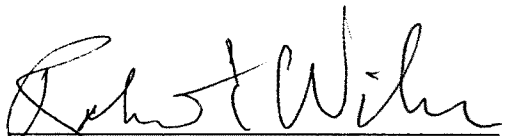
39. The court's decision should also include an express finding and order that declares, as a matter of law, that so long as the association's purpose as set forth in the Articles of Incorporation remains the same as originally described,

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the swimming pool facility shall be maintained by the defendant association and its Board of Directors and not removed or decommissioned.

Dated this 18th day of September, 2014, at Oak Harbor

Washington.


ROBERT WILBUR