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4 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
5
6 **IN AND FOR THE COUNTY OF ISLAND**
7

8 **ROBERT WILBUR and DUSTIN**
9 **FREDERICK,**
10 **Plaintiffs,**

11 **vs.**

12 **ADMIRAL'S COVE BEACH CLUB, a**
13 **Washington non-profit corporation;**
14 **and JEAN SALLS, MARIA**
15 **CHAMBERLAIN, KAREN SHAAK,**
16 **ROBERT PEETZ, ELSA PALMER, ED**
17 **DELAHANTY AND DAN JONES,**
18 **individuals,**

19 **Defendants.**

20 _____
21 **SUE CORLISS,**

22 **Intervenor,**

23 **vs.**

24 **DUSTIN FREDERICK, ROBERT**
25 **WILBUR, ADMIRAL'S COVE BEACH**
26 **CLUB, a Washington non-profit**
27 **corporation, and its BOARD OF**
28 **DIRECTORS.**

29 **Defendants.**

NO. 13-2-00741-4

DECLARATION OF ROBERT
WILBUR IN RESPONSE TO
CORLISS CROSS MOTION
FOR SUMMARY JUDGMENT

30 **UNDER PENALTY OF PERJURY AND PURSUANT TO THE LAWS OF THE**
31 **STATE OF WASHINGTON, I CERTIFY THAT THE FOLLOWING IS TRUE AND**
32 **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. This declaration is submitted in response to the "Cross Motion for Summary Judgment" filed in this

DECLARATION OF BOB WILBUR IN RESPONSE
TO CORLISS CROSS MOTION FOR SJ
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1 matter on behalf of the intervenor, Sue Corliss. This declaration is based on my
2 personal knowledge of the facts. I am over the age of eighteen years and competent to
3 be a witness.

4 At the outset, it is my assumption in this response that the declarations
5 submitted by Ms. Corliss and her friends in response to my summary judgment motion
6 are the declarations that also support, in part, Ms. Corliss' cross motion for summary
7 judgment. I will be submitting a separate reply to those declarations within the time
8 required by the court rules, rather than repeat that same material in this response.
9

10 When weighing the validity of those declarations and the credibility of those
11 declarants, the court should keep in mind that most are among the same eleven or
12 twelve people who have been part of a loud but relatively small minority of persons
13 who reside in the Plat of Admiral's Cove (although one of these individuals has not
14 lived in the Admiral's Cove subdivision for years) and who routinely oppose any effort
15 to raise funds for the maintenance and repair of the swimming pool. Ms. Sauls, Mr.
16 Peetz, Ms. Chamberlain and Ms. Shaak were each voted out of office as members of
17 the ACBC board of directors after the court entered its Temporary injunction in
18 December of 2013. The ACBC membership soundly rejected the misdirected
19 leadership and policies of these individuals after it became apparent that they were not
20 looking out for the membership's interest as a whole; but were instead focused on their
21 own, self-serving agenda. As noted, each of these individuals are and have been
22 vocally "anti-pool" and were members of the board who acted improperly to try and
23 decommission the ACBC swimming pool and related facilities. It is not surprising that
24 these former board members and their like-minded friends have submitted
25 declarations supporting Ms. Corliss' position in this matter. Yet, these folks, no matter
26 how well intended, clearly do not represent the vast majority of the residents in the Plat
27 of Admiral's Cove nor is their narrow focus on whether they can afford to pay for the
28 needed improvements, particularly relevant to the issues before the court. Accordingly,
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1 the court should not give the declarations of Ms. Corliss' supporters much weight on
2 this issue.

3 The second general, but important point that I would like to make before
4 addressing the specific statements of the Corliss supporters, is that the swimming pool
5 owned by the members of the Plat of Admiral Cove Beach Club is not run down or
6 dilapidated as portrayed by the "anti-pool" affiants in this matter. It is in fair to good
7 condition and is very unique because of its location. I have attached as exhibits to this
8 declaration, true and correct copies of the ACBC swimming pool as it appeared in the
9 summer of 2014. As the court can see, even without the maintenance that should
10 have been performed in earlier years, the pool facility is an attractive and valuable
11 asset.
12

13 It is true, however, as Mr. Bradley Portin noted on page 3 of his declaration, that
14 "[p]rior boards failed in their duty to appropriately manage the club's funds to
15 provide for the growth of a reserve account necessary for the maintenance of an
16 outdoor pool." One of the principal reasons the ACBC swimming pool and facilities
17 require so much upgrading today, is because of the type of decision making
18 attributable to boards like the one that Ms. Salls chaired. Specifically, a number of prior
19 boards were obviously persuaded by some property owners that dues and
20 assessments should be kept at a minimum, regardless of the long term costs that are
21 always associated with failing to maintain capital assets. In this respect, Mr. Portin is
22 spot on – it would be negligent for a board of directors such as those that govern
23 ACBC, to fail to provide for maintenance of capital assets and an appropriate reserve
24 account. And, it was the shortsightedness of Ms. Salls, her cohorts and likeminded
25 boards of the past, that created ACBC's current need to impose assessments at a
26 level sufficient to preserve our club's assets.
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29 The community swimming pool shown in the attached photographs is the
30 primary asset of ACBC and the association was formed years ago primarily for the
31 purpose of operating and maintaining it. Simply because bad or "ill advised" decisions
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1 were made for many years in the past to keep dues down and assessments non-
2 existent, it does not stand to reason that the members of ACBC must now forfeit their
3 ownership and interest in the swimming pool and its related facilities.

4 The question before the court is not whether an individual property owner can
5 "afford" to pay a proposed assessment or dislikes the idea of having to pay for
6 something they don't use. The issue is whether the organization known as Admiral's
7 Cove Beach Club can abandon its obligation to operate and maintain this swimming
8 pool when ACBC was clearly formed for the express purpose of doing so and when
9 those purposes remain valid and in effect. Simply because a swimming pool was not
10 initially identified in the Articles of Incorporation as the specific recreational facility for
11 which the association was being formed, does not mean we should ignore what
12 actually happened. ACBC was incorporated and shortly thereafter, the developers of
13 the plat constructed a swimming pool and related facility. Apparently, when the original
14 developers created ACBC and established its purpose to operate recreational
15 facilities, they had a swimming pool in mind because that is what was constructed at
16 the time the organization was formed.

17 There are number of statements in the cross motion and declarations of Ms.
18 Corliss and her supporters that I will address specifically in this response.

19 **Motion - Page 1 starting Line 6:**

20 A single property owner in the 600-Member Admiral's Cove
21 development is asking this Court to force the Admiral's Cove
22 Beach Club to continue to operate --and to repair -- its
23 dilapidated, uncovered, outdoor swimming pool. This pool is
24 only open on a very small number of days each year, and is
25 only used regularly by a small number of the Cove's 600
26 Members.

27 **Response:** Firstly, while there are about "600+" property owners within the plat
28 of Admiral's Cove as Ms. Corliss and her counsel describe, there are only about 450
29 actual residences located within the plat of Admiral's Cove, and many of these
30 residences are vacation rental homes or second homes. The balance of the property
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1 owned consists of vacant and in some cases unbuildable lots. Some of the owners are
2 not on the island as frequently as the full time residents, which obviously limits their
3 access to the pool and the facilities as well. But all owners have the right to access the
4 pool and related facilities based on their membership in ACBC, whether they elect to
5 use the facilities regularly or not. Some owners use the pool daily when it is open and
6 others never set foot on the premises.
7

8 However, this reality has nothing to do with the association's stated purpose
9 and its corresponding legal obligation to maintain the pool and the other assets owned
10 by the members of ACBC. Our situation is not unlike the swimming pool operated by
11 the North Whidbey Parks and Recreation District. Not everyone within the taxing
12 district uses the John Vanderzicht Memorial swimming pool and many tax payers
13 would probably prefer to not have to pay taxes for something they don't use. Yet that
14 does not excuse their obligation.
15

16 Many of the property owners within the Admiral's Cove Plat have supported my
17 actions in this lawsuit. Simply because I have not requested that multiple individuals
18 join in this lawsuit as Plaintiffs, does not mean that I am the only person interested in
19 seeing this issue resolved properly and in a manner consistent with the original articles
20 of incorporation and our current bylaws.
21

22 More importantly, the will of the majority of our membership is most profoundly
23 evidenced by the fact that the membership in 2013 voted three "anti-pool" board
24 members off the board in favor of pro-pool candidates, and they also rejected then
25 candidate Sue Corliss, who was clearly against the continued maintenance and
26 operation of the swimming pool. Then, in the fall of 2014 the membership voted to
27 retain the 3 incumbent pro-pool Board members, again soundly rejecting Sue Corliss's
28 second attempt to win a seat on an anti-pool platform, as well as two other middle-of-
29 the-road candidates. The anti-pool candidates all ran on the very same pool issues
30 now being asserted by Ms. Corliss and her friends.
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1 Throughout her materials, Ms. Corliss complains about the sad state of the
2 swimming pool and alludes to its limited value and purpose. As I mentioned previously,
3 the attached photos contradict those assertions. The pool's "open periods" have been
4 restricted in recent years, not because the pool could not have been open for the full
5 season, but because of prior board of directors' failure to properly maintain or replace
6 the physical equipment needed to keep it operational. That deferred maintenance is
7 now more costly than it would have been had a reserve fund been kept and
8 maintenance levies imposed, but it is still not exorbitant given the inherent value of the
9 pool and the related facilities. The current situation should serve to highlight the
10 problem that occurs when boards of directors irresponsibly delegate maintenance to
11 membership voting. Although it may not always be popular to impose higher dues or
12 request approval of assessments, the failure to do so will only result in greater costs in
13 the future. Whether it's a roof on a building, an oil change in a car or paint on the
14 walls, eventually assets require maintenance and the sooner the issue is addressed
15 the less costly the problems will be to solve.
16

17
18 **Motion - Page 2 starting Line 13:**

19 The Members have not approved these assessments, and many of them simply
20 cannot afford them.
21

22 **Response:** This statement is inaccurate, misleading and partly irrelevant. The
23 "Members" are not permitted to approve assessments unless certain conditions occur.
24 Secondly, nothing within ACBC's governing instruments allows a subjective
25 "affordability test" to be a factor in determining whether assessments should be made
26 against members' property.
27

28 The Articles of Incorporation give general authority to ACBC as an entity to
29 "levy assessments and enforce collection of the same against owners of property in
30 Admiral's Cove." Article V, Section 8 as amended by Article II of the Articles of
31 Amendment recorded on March 30, 1987. In addition to the general authority to
32 impose assessments given ACBC in its Articles, as amended, the Board is granted the

1 express authority and obligation to secure and obtain "operational and maintenance
2 funds" from the members.

3 ACBC's Bylaws, at Section 7, expressly authorize the Board of Directors to set
4 dues and levy assessments "for the maintenance and upkeep of the Club's property."
5 Assessments may be levied against members' properties by the Board of Directors
6 and membership approval of board originated assessments is only required in the
7 event the assessment is an increase in "dues" over the previous year in excess of
8 10%. In prior years, Ms. Salls, Ms. Chamberlain, Ms. Shaak, Mr. Peetz, Ms. Palmer
9 and the other previously elected Board members could have voted to increase the
10 dues associated with ACBC membership by 10% a year without a vote of the
11 membership. Had they done so with the goal of building up a reserve account for
12 asset replacement, ACBC's pool would not likely be in the state that it currently
13 appears and the current financial burden would not have been so heavy.
14

15
16 Governance of ACBC is vested in its Board of Directors. The board is charged
17 with the responsibility of maintaining ACBC's assets – not only because of the
18 importance of the asset itself, but also because the existence of a properly maintained
19 pool or tennis court or community center enhances the property value and quality of
20 life of all owners who elected to purchase property within the plat. An individual
21 owner's subjective complaints about dues affordability is not an issue that should be
22 considered by this court. That is a matter for the board when it establishes dues and
23 assessments after evaluating the association's needs.
24

25 When a person purchases property governed by an association such as ACBC,
26 they are doing so with the knowledge that dues are payable and special
27 assessments will occur. That was certainly true for me when I purchased my
28 property.
29

30 **Motion -Page 3 starting Line 12:**
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1 Accordingly, pursuant to RCW 7.40.180 the Intervenor
2 requests that the Court dissolve the TRO. This will return
3 management of Club budgeting, financing, and decision-
4 making to where it belongs: the democratically-controlled
5 and Member managed Admiral's Cove Beach Club.

6 **Response:** Again, Ms. Corliss and her attorney are mistaken in their
7 understanding of how ACBC operates. The Articles of Incorporation provide the
8 members with no authority for "*management of Club budgeting, financing, and*
9 *decision-making*" but instead appropriately assigns those responsibilities to the board.
10 If members were to have to vote on all such decisions, management of ACBC affairs
11 would be untenable.
12

13
14 **Motion - Page 3 starting Line 16:**

15 The main legal defect with Mr. Wilbur's case is that he
16 offers no legal support for his claimed property right in
17 the perpetual operation and repair of a swimming pool.
18

19 **Response:** This argument misrepresents my position. I am not suggesting that
20 I have an unalterable property right "in the perpetual operation" of the swimming pool. I
21 am only asking that the court force the board of directors and the membership to
22 adhere to the purposes of ACBC's formation by not decommissioning the swimming
23 pool; and to do so for as long as ACBC's purpose and objectives as defined in the
24 articles and bylaws, remain the same. The Articles and Bylaws can be amended if the
25 proper procedure is followed. Accordingly, if Ms. Corliss and her supporters can
26 persuade the membership to vote in sufficient numbers to change ACBC from an
27 organization formed for the purpose of "construct[ing], install[ing], maintain[ing] and/or
28 own[ing] and operat[ing] athletic and recreational facilities of all types and kinds for the
29 benefit of the members" to something different, then maintenance of the swimming
30 pool may no longer be a compelling issue. But that has not occurred and likely will not
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1 occur. Regardless, the option to make the change is built into the governing
2 documents.

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4 **Motion - Page 3 starting Line 24:**
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6 In support of the remarkable assertion that he possesses
7 an individual property right to force the Cove development
8 to repair and operate the pool, Mr. Wilbur cites to no
9 supporting case law or statutes whatsoever. No principal
10 of property law is discussed or referred to...[N]either the
11 Restrictive Covenants nor the Articles of Incorporation
12 say anything whatsoever about a swimming pool. The Articles
13 of Incorporation do make clear, however, that the Club has
14 the right: "To sell, convey, mortgage, pledge, lease,
15 exchange, transfer and otherwise dispose of all or any
16 part of the property and assets." [And more of the same on
17 page 13 starting on line 5.]

18 **Response:** The court has already determined in its decision to grant the
19 Temporary Injunction, that ACBC's general right to sell or "otherwise dispose" of its
20 property and assets is not a right that exists in a vacuum or one that can be exercised
21 by the board in derogation of ACBC's stated purposes and objects. Decommissioning
22 the swimming pool without a change in the purposes and objects set out in the Articles
23 and Bylaws would unreasonably defeat my right to rely on the reason for the formation
24 of ACBC and the significance of my right to be a member in that organization. I
25 acquired my property with full knowledge of what it meant to be part of ACBC as an
26 owner of property within the plat. In making the decision to purchase my property, I
27 relied upon the significance of those stated purposes, the existence of an athletic
28 facility in the form of a swimming pool and the unique value and character that this
29 pool provided to me and my family. It was also my expectation and belief that no
30 change would occur in the purpose and object of ACBC unless 2/3 of my fellow
31 property owners voted to make it so. (See Article VII, Articles of Incorporation.)
32

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2 **Motion - Page 12 starting Line 7:**

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4 These [documents] were the Articles of Incorporation of the
5 Admiral's Cove Beach Club, and the Restrictive Covenants
6 Running With Land of the preexisting Admirals Cove Inc....
7 [N]either of these documents makes any mention whatsoever of
8 a swimming pool. The pool is not referenced or mentioned
9 either in the Articles of Incorporation or the Restrictive
10 Covenants.... [continuing on Line 18] A reasonable land owner,
11 reviewing these formation documents, would have no basis to
12 conclude that they are gaining an enforceable property right
13 to the continued operation of a swimming pool. By their plain
14 terms these documents simply do not establish any such
15 entitlement.

16 **Response:** This argument is somewhat absurd. When I purchased my lot I
17 reviewed the Articles and Bylaws of ACBC and easily understood that the only
18 recreational facility of any significance that was owned and maintained by ACBC at the
19 time was a swimming pool. Furthermore, the Articles of Incorporation clearly stipulate
20 that ACBC will maintain and operate its recreational and athletic facilities and assess
21 its members accordingly. So, "*A reasonable land owner, reviewing these formation*
22 *documents,*" would in fact have a strong basis (as opposed to "*no basis*") to conclude
23 a property right and expectation that the recreational and athletic facilities would be
24 continued or enhanced rather than eliminated and would be a valued selling point
25 when they get ready to sell their property. That certainly was the case in my purchase.

26 **Motion - Page 14 starting Line 13:**

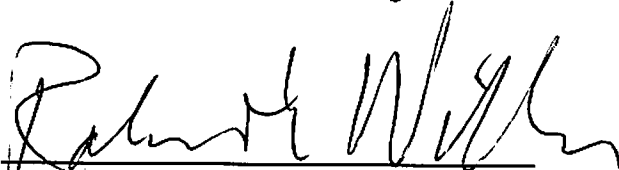
27
28 There is no logic to the proposition that someone can
29 acquire a permanent property right by reference to
30 internal Bylaws. Such Bylaws change over time, yet by Mr.
31 Wilbur's logic they could never change, at least in
32 reference to the pool he prefers. Under the Bylaws, a
 majority of Members could, by a simple vote, remove any
 reference to a swimming pool. Under these circumstances,

1 the Bylaws cannot vest in any single Member an absolute
2 enforceable property right of the kind asserted by Mr.
3 Wilbur.

4 **Response:** As clearly noted in my amended motion for partial summary
5 judgment, I am not asserting a property right based upon my deed per se, but I do
6 believe that I and other similarly situated property owners have the right to rely on the
7 terms of the articles and bylaws and the purposes and objects of ACBC set out
8 therein. In purchasing my property I also relied upon the fact that these purposes, and
9 thus, the significance of the pool, can only be modified by a two-thirds vote of the
10 members. Based on these documents and the undisputed facts in this case, the
11 members of ACBC have a justified reason to expect that the pool will be maintained
12 rather than destroyed, and that were the club to decide to eliminate the pool without
13 replacing it with a recreational and athletic facility of similar value and usefulness, it
14 would require a change in the purposes ACBC as defined in the Articles of
15 Incorporation (Article V, paragraph 1).
16

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18 The cross motion for summary judgment should be denied and my request for
19 the entry of an order granting summary judgment in my favor should be entered for the
20 reasons requested.

21 Dated this 29th day of January, 2015, at Oak Harbor, Washington.

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ROBERT WILBUR