

**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.

NO. 13-2-00741-4

**ROBERT WILBUR'S
DECLARATION IN REPLY TO
RESPONSE OF DEFENDANTS
RE: TEMPORARY
INJUNCTION**

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

1. I am over the age of eighteen years and competent to be a witness. This declaration is submitted in REPLY to the responsive material provided by the Defendants to the court in connection with the Plaintiffs' request to have the temporary restraining order remain in effect as a temporary injunction pending final disposition of this proceeding. The information contained in this declaration is based on my personal knowledge of the facts.
2. I am a member of Admiral's Cove Beach Club and one of the Plaintiffs in this case. I reviewed the Defendants' response to the Plaintiffs' motion and observed

1 that there are several inaccurate and misleading statements contained within that
2 response.

3 3. The temporary restraining order previously entered should be converted to a
4 temporary injunction while this lawsuit is pending resolution. To do otherwise
5 will create irreparable harm for the Plaintiffs and those association members
6 who desire to have the issue of the swimming pool's retention and repair fairly
7 submitted to the members for consideration.

8
9 4. The Defendant Board of Directors, or a majority of them, are not merely
10 carrying out the wishes and intentions of the members of Admiral's Cove Beach
11 Club as portrayed by the responsive material they submitted to the court. In
12 fact, they are quite determined to create a situation where the swimming pool is
13 decommissioned or not adequately maintained to the point that it is no longer
14 viable or an asset that the association membership is required to pay for. Once
15 that occurs, if it is allowed to occur, it will be nearly impossible to restore or
16 replace this unique asset. Permitting issues, shoreline management and
17 shoreline environmental issues will effectively preclude any efforts to undo the
18 damage that the majority of the defendant board members are intent on
19 creating. If the pool is decommissioned, whether properly authorized or not, it is
20 extremely unlikely that it will ever be rebuilt or replaced. And that is precisely
21 what the Defendants are hoping to accomplish. Preventing this "loss by default"
22 is one of the reasons that the restraints and injunctive relief should remain in
23 effect pending resolution of this lawsuit. Otherwise, the Plaintiffs may find
24 themselves in possession of a "right without an effective remedy."

25
26
27 5. One of the primary reasons that Mr. Frederick and I filed this lawsuit is because
28 the defendant board of directors, or a majority of them, failed to abide by the
29 specific terms of a resolution that was submitted and approved by the members
30 of ACBC at an annual meeting held on October 27, 2012. The Defendants'
31 reply fails to acknowledge that fundamental issue. The board of directors is
32 NOT carrying out the direction provided to it by the members at the 2012 annual

1 meeting and is therefore, not abiding by the provisions of the association's
2 articles of incorporation and bylaws as they contend.

3 6. An annual meeting of the membership of Admiral's Cove Beach Club took place
4 on October 27, 2012. One of the issues considered at the annual meeting was
5 the future disposition of the swimming pool.

6 7. At that meeting, the following motion was approved unanimously by
7 substantially more members than the minimum quorum of members otherwise
8 necessary to approve a motion. Of particular significance are tasks 2 and 3.
9 The directives described in numbers 2 and 3 were not followed by the board. In
10 fact, the majority of the board appears to have deliberately usurped the tasks of
11 a member populated committed described in elements 2 and 3 of the resolution,
12 in complete disregard of the members' unanimous intent AND directive.
13

14 *Motion re Formation of a Pool Planning Team:*

15
16 *"Given that a plurality of the ACBC members are present at this October*
17 *27, 2012, annual ACBC meeting, I move that by November 10, 2012, the*
18 *2012/2013 Pool Maintenance Committee will seek the input of a*
19 *nonresident facilitator, as an ex-officio member and may consult with*
20 *legal counsel as warranted.*

21 *Under the overall objective of having the pool open as soon as a funding*
22 *and construction schedule allow, the Pool Maintenance Committee shall*
23 *have three (3) tasks to complete by February 28, 2013, or sooner:*

24 (1) *To identify and evaluate various options related to the pool's future,*
25 *including but not limited to needed equipment, a permanent pool cover,*
26 *and repairs to the pool and its building, foundation, plumbing, and*
27 *electrical system, and to establish the best cost and timing options. This*
28 *may include seeking the services of a qualified structural engineer (cost*
29 *not to exceed \$2,500). A basic and simple plan to identify projects for*
30 *contractor bidding shall be developed to guide these efforts; the plan*
31 *shall also include an implementation schedule for ADA compliance from*
32 *both a financial and legal standpoint.*

(2) *To investigate and develop payment options related to assessment costs*
and dues under task 1, and to select the approach that produces the
best balance between recreational benefits and costs to members. The
assessment total under task 1 will be offset by the amount of donations
pledged or accumulated to that date.

1
2 (3) Upon completion of tasks 1 and 2, the Committee shall submit its
3 findings to the Board and subsequently work with the Board to prepare
4 an appropriate assessment ballot to be voted on by the members. The
5 Committee's findings shall be included, in full, with the ballot."

6 8. The action taken by the board after this meeting did not abide by the members'
7 direction. The Pool Maintenance Committee was not allowed to remain involved
8 in the process nor was it include in the development of the ballot that was
9 eventually sent to members regarding the pool's future viability and the costs of
10 repairing and maintaining it.

11
12 9. Defendant/Director Dan Jones acknowledged that the Pool Committee was to
13 examine financing and prepare a ballot on the pool rehabilitation in a January 2,
14 2013, email sent to the Pool Committee which read as follows:

15 "Our committees need to use professional advice to determine: What can be
16 done, what must be done, when it must be done, how it can/should be done,
17 what everything will cost, how the project can be financed? Appropriate
18 committees/employees will prepare reports and recommendations to the
19 board, including: 1) a proposed budget for the rehabilitation of the pool, 2) a
20 timeline for completion, 3) a ballot for membership approval, 4) a
21 professional request for proposals."

22 A true and correct copy of Dan Jones' email is attached hereto as Exhibit 1.

23 10. The following summary explains the events leading up to the above described
24 motion and how, after adoption, the clear intent of the motion was intentionally
25 subverted by four the defendant Board of Directors.

- 26 a) Early summer 2012: Various issues cause the pool to be open and closed.
27 The Board acquired information from various sources on repairs and cost
28 estimates. Talk begins on the need for an assessment. Arguments arise on
29 whether all repairs are needed and inflated and whether repairs and
30 upgrades should be spread over several years or so. In September the
31 Board held 3 town hall meetings to explain the repairs needed and to take
32 suggestions.
- b) At those meetings, many voiced a need to form an ad hoc committee of both
pro and anti pool members and Directors to examine the costs and develop
a plan. The suggestion had wide support, but the Board clearly was not
interested and continued on its path to put its destruction of the pool to a
vote. The conflict becomes quite active.

- 1 c) The officers' inaction and refusal to form an ad hoc committee prompted a
2 movement among pro-pool members to commit to attending the October
3 annual meeting of ACBC in sufficient numbers to constitute a quorum and
4 vote the offending four Directors off the Board. The needed signed votes to
5 remove the directors were obtained, but there was reluctance to go that far if
6 another solution could be adopted and agreed upon. (Those votes are
7 available for the Court to review).
- 8 d) As an alternative to removal of the offending Board members, the motion to
9 save the pool was created and introduced at the annual meeting, to force
10 the Board to allow a committee to interface with the Board on the pool
11 repairs. The motion was softened and tweaked at the meeting but the main
12 mission remained in force and was adopted unanimously as written as
13 quoted above.

14 11. The following details the history of the Pool Maintenance Committee meetings:

- 15 a) The member approved motion had two pool committees assigned to handle
16 the three tasks. Cathy Harris was appointed to chair the Pool Maintenance
17 Committee. She was somewhat dilatory in calling for a meeting of the
18 committee. The first was scheduled two months after the October motion
19 was approved by the memebtrs. The meeting, Friday morning, December 28,
20 was announced just seven days prior without any attempt to arrange with
21 others' schedules, particularly given the holidays and that many of our
22 members reside off island. Only 4 of the 10 members were able to attend
23 because of schedule conflicts created by the holidays. Ideas and strategies
24 were discussed, in expectation of further discussion and decisions to be
25 made at subsequent meetings. The four attending agreed that the
26 committee should get a neutral pool expert to evaluate the pool. There was
27 no option for input from those unable to attend.
- 28 b) At the January 12, 2013 regular Board of Directors meeting, Ms. Harris and
29 the Board announced plans to retain 1) an architect to evaluate the building
30 structure and 2) a new pool expert to evaluate the condition of the pool. At
31 that point Harris and the Board took over the entire process gathering of
32 cost estimates, usurping the process that was supposed to have been done
through the committee.
- c) On January 22, 2013, Ms. Harris announced the second meeting of the
committee for Sunday morning, Jan 27 (6 days notice) without any attempt
to see how that date might work for anyone. In the past we have contacted
off-island members and tried to coordinate schedules with them to
encourage participation. Only 4 members were able to be at the second
meeting. Basically, from this point on the Board and Harris took over the
task of assessing the potential costs for each option, and there were no
further meetings until after that work was completed.

- 1 d) On March 28 Catherine announced what was the final meeting (April 11 of
2 the Pool Maintenance Committee, which for some reason included nearly all
3 the Directors, and at which the architect and pool experts findings would be
4 presented for review prior to the Board meeting 2 days later).
- 5 e) By mid April it became quite clear that Ms. Harris would ignore the second
6 and third charges of the Motion (examination of funding options and
7 subsequent ballot development). Of particular interest to the membership
8 was whether there were ways to trim the scope of work and costs,
9 contingency budget amounts, and financing. When iterative requests were
10 made to her to have the committee address these issues, Harris' response
11 was "take it up with the Board", and she subsequently ceased to have a role.
- 12 f) Consequently, requests were made by several members to the Board in late
13 April and early May for the two committees to meet to examine funding
14 options and develop an assessment ballot as directed by the members
15 resolution; but those requests were ignored.
- 16 g) Mr. Frederick and I advised the Board that a group of us (members) would
17 meet independently on May 3 to explore funding options, and invited any
18 Board and the members of the two committees who could attend to do so.
19 Dan Jones, Suzy Palmer, Sue Corliss, Fred Salmon, Maria Chamberlain,
20 and Bob Wilbur attended. The meeting was quite acrimonious, producing
21 only further obstruction on the Board's part to facilitate a role for the pool
22 committees in developing the ballot. There was no mention of the Board
23 preparing a ballot at this time.
- 24 h) On Sunday May 4, 2013 four of the Board members met in the morning at
25 the ACBC club house. This was not a scheduled meeting and no members
26 were notified of the Board's intentions.
- 27 i) Three days later, May 7, 2013, the ballot had been prepared by the Board
28 (in response to the "informal meeting") and shortly thereafter the Board
29 generated ballot regarding the swimming pool was sent out to members. It
30 was prepared by the same Board members that met the prior Sunday,
31 excluding participation of two pro-pool Directors and one somewhat neutral
32 Director. The Pool Maintenance Committee was not permitted to provide
input or recommendations about the substance of the ballot and the manner
in which it described the issues to be decided.


12. In their haste to get a ballot out to the membership regarding the swimming pool and the related, alternate assessments (\$650,000 to keep it; \$200,000 to decommission) the four Board members who previously met without proper notice, sent out a ballot that: (1) ignored the members' instructions and intent in the unanimously approved Motion, (2) was confusing and failed to provide for a "no" vote for assessments as an option, (3) was intentionally insensitive to members' financial constraints by not providing financing options as required by

1 the Motion, (4) had not resolved whether a 2/3 majority vote was needed and
2 did not include such explanation in the ballot (this remains a question
3 unresolved), (5) rushed their ballot into the mail in derogation of committee
4 members' intent and efforts to ensure inclusion of a financing option that would
5 produce more votes favoring the pool's rehabilitation; and (6) by its
6 methodology, failed to preclude the possibility of tampering. On this last item,
7 ballot tampering could have easily been precluded of the voting process had
8 been done pursuant to Roberts Rules of Order (as required by Article XV,
9 section 1 of the bylaws.)

10
11 13. The Defendant Board of Directors has not properly adhered to the resolution of
12 the members approved at the association's annual meeting. If the Board is not
13 restrained and enjoined from taking steps to decommission of "fill in" the
14 swimming pool while the validity of their actions is being challenged, the
15 Plaintiffs and other members of ACBC will be irreparably harmed. The pool
16 cannot be retrieved or rebuilt once it is decommissioned for the reasons
17 previously stated. Despite the Board's attempt to cast themselves as mere
18 conduits of the association's business, the consequence of not enjoining the
19 Board from decommissioning the pool is far more likely to result in irreparable
20 harm than the alternate result.
21

22 The Plaintiffs' request for the entry of a temporary injunction pending
23 final disposition of this case should be granted.
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26 Dated at Oak Harbor, Washington this 25th day of November, 2013.

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29 Robert "Bob" Wilbur
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7 IN AND FOR THE COUNTY OF ISLAND

8
9 ROBERT WILBUR and DUSTIN
10 FREDERICK,
11
12 Plaintiffs,

NO. 13-2-00741-4

GR 17 DECLARATION

13 vs.


14 ADMIRAL'S COVE BEACH CLUB, et
15 al.,
16 Defendants.

17
18 UNDER PENALTY OF PERJURY AND PURSUANT TO THE LAWS OF THE
19 STATE OF WASHINGTON, I CERTIFY THE FOLLOWING TO BE TRUE AND
20 CORRECT:

21 I, Linda Williams, am assistant to Christon C. Skinner who is the attorney of
22 record for the plaintiffs herein. I received a document entitled ROBERT WILBUR'S
23 DECLARATION IN REPLY TO RESPONSE OF DEFENDANTS RE: TEMPORARY
24 INJUNCTION from Robert Wilbur by facsimile.
25

26 I further declare that prior to signing this affidavit, I did examine the document,
27 determined that it consisted of seven pages excluding the exhibit and that the
28 document was complete and legible.

29 DATED this 25th day of November, 2013, at Oak Harbor, Washington.
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Linda Williams