

Hearing Date: April 6, 2018, 8:30 a.m.
Honorable Judge Hancock

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

ROBOERT WILBUR and DUSTIN
FREDERICK,

Plaintiffs,

v.

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.

Case No.: 13-2-00741-4

OPPOSITION OF INTERVENOR SUE
CORLISS TO THE BOARD'S AND
PLAINTIFF'S RENEWED MOTION FOR
SUMMARY JUDGMENT

SUE CORLISS,

Intervenor,

v.

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

Defendants.

ARGUMENT

The current motion is a rehash of the summary judgment motion this Court denied on
September 1, 2017. This new motion offers nothing new. Moreover, since the Court's ruling

1 denying the Board's summary judgment motion, neither the plaintiff nor the Board have cured
2 the procedural problems this Court ruled on at the September 1, 2017 hearing. At that hearing,
3 this Court ruled that in the absence of amended pleadings from plaintiff, approved and accepted
4 for filing, there could be no ruling on substantive issues because there was no "cause of action"
5 to rule upon after appeal. Yet neither Wilbur nor the Board have filed any amended pleading.
6 Rather, Wilbur chose to file another summary judgment motion, reiterating the same arguments
7 this Court denied in September. But since that ruling, the procedural posture of the case has not
8 changed. So at this time, this Court should deny summary judgment for the same procedural
9 reasons. There is no new cause of action for the Court to rule on.

11 It is the plaintiff's responsibility to properly prosecute this case. Plaintiff has not done so.
12 Instead, plaintiff is seeking to improperly truncate these proceedings by asking the Court to rule
13 on claims that are not yet before the Court. It has been Intervenor's intention to conduct
14 additional discovery on any new claims that are properly added to the case. By failing to add new
15 allegations despite the Court's ruling on September 1, 2017, Wilbur is putting the cart before the
16 horse. Plaintiff seeks to prevent a proper course of discovery to test whatever new claims or
17 allegations might be properly presented to this Court. This is unfair to Intervenor.

19 Moreover, Wilbur and the Board persist in seeking summary judgment on claims this
20 Court already rejected. On March 6, 2017, this Court denied in part Wilbur's Motion to Amend
21 the Complaint. The Court ruled that all issues relating to the 2013 vote of the Admiral's Cove
22 community had been resolved in the prior judgment and full merits appeal, in Intervenor's favor.
23 Allowing additional claims related to the 2013 vote would be improper "claim splitting" by
24 Wilbur. Accordingly, the Court denied Wilbur's request to add additional claims regarding the
25 invalidity of the 2013 vote, including the claim that the vote was somehow invalid because the
26 ballot did not include a strict "no vote" option.

1 Since that clear ruling, Wilbur and the Board have twice presented exactly this claim –
2 the new claim regarding the 2013 vote – in summary judgment motions presented to this Court.
3 The Board tried this tactic in the motion this Court denied on September 1, 2017. Now Wilbur
4 presents this same argument in the present motion. Neither Wilbur nor the Board have
5 adequately explained how they can, in good faith, repeatedly present this claim to the Court for
6 summary adjudication, when the Court already ruled that this claim will not be added to the case.
7 Reconsideration was not sought to reverse the Court’s March, 2017 ruling, and there is no basis
8 to reconsider it. Obviously, this conduct imposes undue burden and expense upon Intervenor,
9 who has been forced to respond repeatedly and in writing to this already rejected claim.
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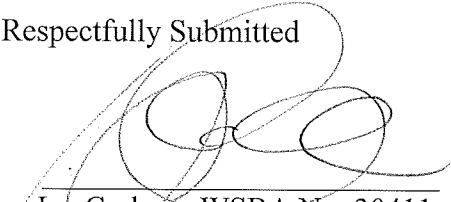
11 The Court’s ruling on March 6, 2017 was very clear on this point. Intervenor Corliss does
12 not intend to further address the claim regarding the 2013 vote. Intervenor relies upon the
13 Court’s prior ruling.

14 Because the current motion is a procedurally improper rehash of the last motion,
15 Intervenor Corliss hereby refers to and incorporates by reference the briefing, declarations and
16 exhibits that were filed in opposition to that prior motion. An additional working copy of these
17 papers is being provided to the Court for consideration, along with this new brief. If the Court
18 does intend to wade into substantive issues despite the procedural defects ruled upon at the
19 September 1, 2017 hearing, Intervenor’s prior papers should be considered in opposition. In that
20 case, Intervenor’s cross-motion for summary judgment should also be considered.
21

22 Since the appeal, the plaintiff has not properly prosecuted this case. Despite this Court’s
23 September 1, 2017 ruling, the defects fatal to plaintiff’s motion have not been cured.
24 Accordingly, this Court should reiterate its ruling from September 1, 2017. Any party seeking
25 legal relief now should be required to formally add new claims to this case, approved and
26 accepted for filing, so these claims can be properly litigated, with adequate discovery.
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Respectfully Submitted

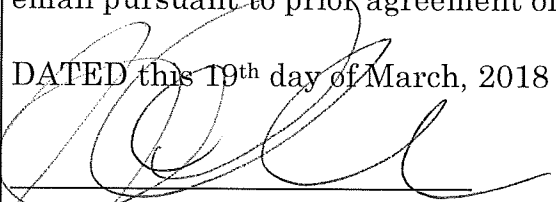


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CERTIFICATE OF SERVICE

Pursuant to CR 5(b), I certify that copies of this document and all supporting declarations and exhibits were delivered to all parties or their counsel of record by email pursuant to prior agreement of the parties.

DATED this 19th day of March, 2018



Jay Carlson
Counsel for Intervenor Corliss