

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

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|                               |   |                        |
|-------------------------------|---|------------------------|
| ROGER L. CLOSE,               | ) |                        |
|                               | ) |                        |
|                               | ) |                        |
| Plaintiff,                    | ) |                        |
|                               | ) |                        |
| vs.                           | ) | Cause No: 10-2-00479-8 |
|                               | ) |                        |
| ADMIRAL'S COVE BEACH          | ) |                        |
| CLUB, INC., a Washington      | ) |                        |
| non-profit corporation, now   | ) |                        |
| known as ADMIRAL'S COVE       | ) |                        |
| HOMEOWNERS ASSOCIATION, INC., | ) |                        |
|                               | ) |                        |
| Defendant.                    | ) |                        |

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Verbatim Report of Court's Oral Ruling

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BE IT REMEMBERED, that on Friday, January 28, 2011, the above-named and numbered cause came on regularly for hearing before the HONORABLE ALAN R. HANCOCK, sitting as judge in the above-entitled court, at the Island County Courthouse, in the town of Coupeville, state of Washington.

The plaintiff appeared in person and through his attorney, Michael D. Brandt;

The defendant appeared through its attorney, William L. Cameron.

WHEREUPON, the following proceedings were had, to-wit:

1           THE COURT: The Court is prepared to rule at  
2 this time on the plaintiff's motion for partial summary  
3 judgment. Of course, on a motion for summary judgment  
4 the moving party bears the burden of proving that there  
5 are no genuine issues of material fact and that the  
6 moving party is entitled to judgment as a matter of law.  
7 All evidence and reasonable inferences from the evidence  
8 must be construed in a light most favorable to the  
9 nonmoving party, in this case the defendants, in  
10 connection with a motion for summary judgment. The  
11 Court cannot balance and weigh the evidence on a motion  
12 for summary judgment.

13           The plaintiff, Mr. Close, characterizes the  
14 issue here in the Statement of Issues in his motion for  
15 summary judgment as being whether Admiral's Cove Beach  
16 Club, Inc. is a homeowners' association pursuant to RCW  
17 64.38. However, in the conclusion of his motion, the  
18 plaintiff indicates, among other things, that the Court  
19 should order that Admiral's Cove is not a homeowners'  
20 association and that it cannot collect assessments from  
21 plaintiff, Roger Close. So those appear to be the  
22 issues before the Court today.

23           Let me address a couple of procedural  
24 matters that the defendants raised in the response to  
25 the motion for summary judgment.

1           The defendants contend that the plaintiff  
2 lacks standing to raise the issue of whether Admiral's  
3 Cove Beach Club is a homeowners' association because he  
4 claims he is not a member of the Association, having  
5 opted out, purportedly. This is a somewhat curious  
6 argument because Admiral's Cove Beach Club is contending  
7 that Mr. Close did not have the authority to opt out and  
8 therefore is a member of Admiral's Cove Beach Club or  
9 Homeowners Association. It would seem, therefore, that  
10 this issue has been joined and, therefore, the plaintiff  
11 can raise this issue.

12           The defendants contend that the plaintiff's  
13 remedy is a quo warranto, Q-U-O W-A-R-R-A-N-T-O,  
14 proceeding under RCW 7.56.010. My apologies for  
15 referring to RCW 70.36 in colloquy. It's RCW 7.56.010.

16           The defendants' contention might be right in  
17 that connection, but it appears to the Court that this  
18 proceeding is, in effect or in substance, such a  
19 proceeding, challenging the ability of Admiral's Cove to  
20 consider Mr. Close to be a member of the Association and  
21 to levy assessments, so the Court will proceed to hear  
22 the matter.

23           There might be something to the defendants'  
24 argument that Mr. Close has no basis to bring his  
25 lawsuit at this time because Admiral's Cove Beach Club

1 has not yet tried to collect any delinquent assessments,  
2 but it seems obvious this issue is not going away and  
3 the Court should address the issues placed before it  
4 today. They appear to be actual and existing  
5 controversies, if you will, that warrant the submission  
6 of these issues to the Court at this time as opposed to  
7 deferring these matters until there's some effort to  
8 collect any delinquent assessments.

9           Initially, from the Court's review of the  
10 papers and pleadings, it appeared that the plaintiff was  
11 contending that if Admiral's Cove Beach Club is not a  
12 homeowners' association under RCW 64.38, then Admiral's  
13 Cove Beach Club could not levy assessments and impose  
14 liens for nonpayment of assessments against him.

15           It appears to me that counsel for the  
16 plaintiff has conceded in oral argument this afternoon  
17 that even if Admiral's Cove is not a homeowners'  
18 association for purposes of RCW 64.38, Admiral's Cove  
19 Beach Club or Admiral's Cove Association, whatever you  
20 want to call it, still has whatever authority was  
21 provided to it by its existing Articles of  
22 Incorporation, Bylaws, and Covenants, Conditions, and  
23 Restrictions to regulate Mr. Close's property and impose  
24 assessments and the like, but, again, that would be  
25 limited to the authority under the now existing

1 Covenants, Conditions, and Restrictions, Articles of  
2 Incorporation, and Bylaws as opposed to whatever general  
3 authority might have been given to the Association under  
4 the statutory provisions in RCW 64.38.

5           In any event, the cases of Rodruck,  
6 R-O-D-R-U-C-K, v. Sand Point Maintenance Commission,  
7 48 Wn.2d 565, a 1956 case; Lake Limerick Country Club v.  
8 Hunt Manufactured Homes, Inc., 120 Wn. App. 246, a 2004  
9 case, and Shafer, S-H-A-F-E-R, v. The Board of Trustees  
10 of Sandy Hook Yacht Club Estates, Inc. 76 Wn. App. 267,  
11 a 1994 case, clearly indicate that if the power to levy  
12 assessments is provided for in the covenants, articles  
13 of incorporation, bylaws, and other governing documents,  
14 then a property owner takes his or her property with  
15 notice of such governing documents if they, for example,  
16 are referred to in the deed or are recorded and are  
17 matters of record, and therefore the property owner  
18 would be on notice of the existence of these governing  
19 documents.

20           So a property owner like Mr. Close would be  
21 bound by the bylaws, articles of incorporation,  
22 covenants, conditions and restrictions, and other  
23 governing documents if they are of record at the time  
24 that he purchased his property, regardless of whether  
25 the association here is a homeowners' association as

1 that term is defined in the statute or whether it simply  
2 is an association for purposes of so-called governing  
3 documents only.

4           It is appropriate, I think, to make some  
5 comment on these cases. In the Lake Limerick case, for  
6 example, a homeowners' association sought to enforce an  
7 assessment of membership dues against the lot on which  
8 the dues were owed and the owner of the lot. The  
9 membership dues had been imposed under the terms of a  
10 recorded declaration of restrictions and the  
11 association's articles of incorporation and bylaws.

12           The court quoted from the Rodruck case as  
13 follows: The homeowners' association under its articles  
14 of incorporation and bylaws had the right to assess its  
15 members for maintenance work and improvements to the  
16 streets and the deeds from the Hayes Investment Company  
17 to appellants' predecessors in interest embodied a  
18 covenant running with the land in that respect, which is  
19 binding upon the appellants as subsequent grantees.  
20 Each of the certificates of title held by the appellants  
21 recites that it is subject to restrictions and  
22 reservations contained in the deed from the Hayes  
23 Investment Company to their predecessors in interests.  
24 Unquote.

25           So the court in the Lake Limerick case held

1 that the recorded declaration of restrictions did create  
2 a servitude, that is to say, a covenant running with the  
3 land, that became effective with the original conveyance  
4 of lot 53 as it applied in that particular case. That  
5 would have been the lot that was subject to the issue.

6 To address another issue that Mr. Close has  
7 raised in the motion for summary judgment, that was the  
8 issue of whether the covenant to -- or the provision, if  
9 you will, of the governing documents that required -- or  
10 allowed, I should say, the Board of Directors of the  
11 Association to impose assessments for improvements to  
12 the Association property was a valid and enforceable  
13 covenant running with the land or equitable servitude,  
14 and, in particular, the issue is raised by the plaintiff  
15 as to whether that authorization to the Board to do  
16 these things touches and concerns the land. The Lake  
17 Limerick case held that Rodruck squarely held that a  
18 covenant to pay homeowners' dues for maintenance and  
19 repair of common facilities touches and concerns the  
20 land.

21 So there is no doubt that this authorization  
22 of the Board to levy assessments for improvements to  
23 Association property or property under the authority of  
24 the Association do touch -- does touch and concern the  
25 land and therefore this would be a valid covenant

1 running with the land or equitable servitude.

2 By the way, the most recent decisions from  
3 our state Supreme Court seem to essentially equate  
4 covenants running with the land and equitable servitudes  
5 for purposes of modern day analysis.

6 The Lake Limerick court held that -- or  
7 stated, as it were, in Rodruck that -- or that in  
8 Rodruck the state Supreme Court had held that the bylaws  
9 of a homeowners' association, in effect, constitute a  
10 contract between the association and its members, and  
11 the Lake Limerick court noted that the Rodruck court had  
12 concluded that the dues and assessments in issue were  
13 binding obligations as against appellants and the  
14 property to which they held title in the Sand Point  
15 district.

16 The Lake Limerick court also noted that even  
17 if the property owner in question elected not to use the  
18 facilities for which the assessments were imposed, that  
19 the property owner still benefited because the property  
20 was worth more as a result of these amenities. And the  
21 court further indicated that the property owner would be  
22 unjustly enriched if it could retain that benefit  
23 without paying for it, and thus the law will imply a  
24 contract to pay dues imposed according to the  
25 association's obligation to act fairly and within the

1 scope of the corporate function outlined in its charter  
2 and bylaws.

3           Then we have the case of Shafer v. Board of  
4 Trustees that I referred to earlier. That was a case in  
5 which a quo warranto proceeding challenging a nonprofit  
6 corporation's adoption of restrictive covenants was  
7 instituted. The contention of the plaintiff was that  
8 the adoption of restrictive covenants was invalid  
9 because it was without the agreement of all of the  
10 affected property owners.

11           The trial court, and also the court of  
12 appeals, held that the nonprofit corporation did have  
13 the authority to adopt the restrictive covenants in  
14 question because the procedure for doing so was  
15 authorized in the so-called governing documents, in  
16 effect.

17           The Shafer court again cited the Rodruck  
18 case for the proposition that, in determining whether a  
19 covenant ran with the land, the court considered the  
20 articles of incorporation and bylaws to be correlated  
21 documents to the deed.

22           The court concluded that the power to adopt  
23 new restrictions respecting the use of privately owned  
24 land that bind all Sandy Hook property owners was  
25 expressly reserved to the corporation, and, therefore,

1 the action of the association was proper and was upheld.

2 In the present case, Mr. Close's statutory  
3 warranty deed is part of the evidence before the Court  
4 today, and it states, among other things, that it is,  
5 quote, subject to all covenants, conditions,  
6 restrictions, reservations, agreements, and easements of  
7 record including but not limited to those shown on  
8 schedule D-1 of Land Title Company's preliminary  
9 commitment number LT-92763. Unquote.

10 So consistent with the holdings of the  
11 Shafer, Lake Limerick, and Rodruck cases, the Bylaws,  
12 Articles of Incorporation, et cetera, are in fact  
13 agreements implied in law that are binding on Mr. Close  
14 since they're specifically referred to in the deed and  
15 they were of record.

16 For some reason I didn't get a courtesy copy  
17 of the preliminary commitment for title insurance in  
18 this case that was referred to in the deed, but I did  
19 check out the original which is attachment E here to the  
20 response to plaintiff's motion for summary judgment, and  
21 the exceptions to Mr. Close's deed granting him fee  
22 simple title to the property include the Bylaws of  
23 Admiral's Cove Beach Club, Inc. recorded June 13, 1986.  
24 Of course, it gives the auditor's file number. It  
25 refers to other instruments of record, but specifically

1 at issue here, it seems to the Court, are the 1986  
2 bylaws which were specifically excepted from Mr. Close's  
3 deed. They are binding on him as the owner of the  
4 property in question.

5 It does appear that the Articles of  
6 Incorporation that were in effect at the time that  
7 Mr. Close purchased his property in Admiral's Cove were  
8 not recorded, at least they were not excepted in the  
9 deed, but the bylaws were, and they would clearly put a  
10 property owner on notice that there were articles of  
11 incorporation that authorized the adoption of bylaws.

12 Now, the 1986 Bylaws clearly provide that  
13 the Board of Directors can levy assessments and special  
14 assessments for the maintenance and upkeep of the Club's  
15 properties. And in this connection I would refer to  
16 Article III, that's Roman numeral III, Section 7 which  
17 provides as far as the matter of membership in the  
18 corporation is concerned that, Active members -- or  
19 Active membership shall be appurtenant to the lot or  
20 lots owned or being purchased by the members. Upon the  
21 transfer of membership or making of a contract for the  
22 sale of any lot, the membership appurtenant thereon  
23 shall be deemed to be transferred to the contract  
24 purchaser or grantee. And then significantly it says,  
25 No membership may be conveyed or transferred in any

1 other way.

2           It goes on to say that, In the event of the  
3 death of a member, his membership shall pass in the same  
4 manner and to the same persons as does the real property  
5 itself. No compensation shall be paid by the Club upon  
6 any transfer of membership and no member whose  
7 membership is transferred shall be entitled to share or  
8 participate in any of the property or assets of the  
9 Club.

10           And then in Article XIV, Section 3 it says  
11 that, Special assessments may be proposed by the Board  
12 of Directors, or members, at any time and must be  
13 presented to the membership at least 30 days prior to a  
14 meeting called in accordance with Article IV of these  
15 Bylaws. They shall require approval of a majority vote  
16 as required by Article V, Sections 2 or 4 of these  
17 Bylaws.

18           And then as far as dues and assessments are  
19 concerned, Article VIII, Section 7 of the Bylaws  
20 provides that the Board, Shall, from time to time,  
21 prescribe the dues and/or assessments that each Active  
22 and Associate Member shall pay to the Club, and the time  
23 or times when said dues shall be payable. The Board  
24 shall have the power to levy assessments against owners  
25 of property in the Admiral's Cove Development on a

1 pro rata basis for the maintenance and upkeep of the  
2 Club's properties.

3           Then it goes on to talk about the fact that  
4 if there were to be an increase of 10 percent or more,  
5 there would have to be presentation to the membership  
6 under procedures outlined in there, but the point is  
7 that the Board clearly had the authority to levy  
8 assessments and special assessments under the procedures  
9 outlined.

10           Interestingly enough, I didn't see anything  
11 specifically providing that unpaid assessments become a  
12 lien against the property in question by virtue of  
13 nonpayment. So perhaps the unpaid assessments would  
14 have to be reduced to judgment before they would become  
15 a lien in the form of a judgment lien against the  
16 properties, but that doesn't appear to be an issue  
17 before the Court today.

18           I mentioned the fact that the plaintiff,  
19 Mr. Close, had contended that the Bylaws of the  
20 Admiral's Cove Beach Club do not satisfy the elements of  
21 an equitable servitude as they do not touch and concern  
22 the land, but, as I mentioned previously, that is not  
23 the case under the Lake Limerick case holding at  
24 120 Wn. App., pages 259 and 260.

25           Mr. Close contends that the Bylaws cannot

1 amend the covenants that were recorded in 1967 against  
2 the lots in Admiral's Cove. That begs the question.  
3 The Bylaws, if properly adopted, are themselves  
4 enforceable against the plaintiff. So it's not a  
5 question of just looking at the Covenants, Conditions  
6 and Restrictions, but it's a question of looking at all  
7 of the so-called governing documents to determine the  
8 authority of the Association and its Board of Directors.

9           Perhaps at this point it might be  
10 appropriate to address this matter of the fact that  
11 Mr. Close purported to opt out of the Association. It  
12 appears fairly obvious that he had no authority to do  
13 that under the Bylaws. Article III, Section 7 of the  
14 Bylaws says that, Active Membership is appurtenant to  
15 the lot, as I referred to before, and, No membership may  
16 be conveyed or transferred except by transferring the  
17 lot.

18           Also in Article VIII of the Bylaws there is  
19 a provision setting forth the Powers and Duties of the  
20 Board of Directors, and the Board of Directors does not  
21 have the power to allow a property owner to opt out of  
22 membership in the Association.

23           I'm not sure that that issue was  
24 specifically before the Court today and to the extent it  
25 might not be, that, perhaps, could be the subject of

1 further proceedings, but the issue was briefed and I  
2 thought I'd better address that.

3 I would also note that the defendants'  
4 additional arguments regarding the lack of authority on  
5 the part of Mr. Close to opt out of the Association  
6 based on RCW 24.04.040 and lack of consideration would  
7 also seem to be correct.

8 There is also a very substantial issue, as  
9 the defendants' pointed out, as to whether the plaintiff  
10 violated his fiduciary duties as a director in  
11 orchestrating the opt-out provision for himself and  
12 others. In opting out of the Association, Mr. Close  
13 appears to have benefited financially by not having to  
14 pay dues and assessments and by, in effect, forcing the  
15 other members of the Association to bear a bigger burden  
16 for the upkeep of the Association's property. So that  
17 is also a fairly persuasive argument that there is no  
18 opt-out right, as it were.

19 Now, as I understand it, the defendants  
20 contend that the 2008 amended Articles of Incorporation  
21 were properly adopted. But were they? That is a  
22 question that has been joined, at least impliedly here.  
23 The Articles of Incorporation can only be amended in  
24 accordance with the methodology set forth in the  
25 original Articles themselves. In other words, a person

1 purchasing property in Admiral's Cove is bound by  
2 whatever governing documents would exist at that point,  
3 but, by the same token, such a property owner is not  
4 bound by restrictions that are not authorized, if you  
5 will, under the governing documents.

6 Mr. Close, in his reply declaration, says  
7 that the amended Articles of Incorporation were not  
8 properly adopted. I understand there's a motion to  
9 strike in that regard. Inasmuch as Mr. Close's  
10 declaration in that regard was a reply declaration that  
11 the defendant's didn't have the right to -- or didn't  
12 have any ability to respond to, I'll leave that issue  
13 for another day, if it becomes necessary for the Court  
14 to reach that issue.

15 The same would go for the Bylaws -- or the  
16 new Bylaws that were adopted, and the question in that  
17 regard as to their validity would be whether they were  
18 adopted in accordance with the procedures that were  
19 previously authorized under the governing documents. So  
20 that perhaps would be an issue for another day.

21 Now, we do have these issues relating to  
22 whether or not the Association is a, quote, homeowners'  
23 association, unquote, as that term is defined in  
24 RCW 64.38.010(1), and that statutory definition says  
25 that a, "Homeowners' association" means a corporation,

1 unincorporated association, or other legal entity, each  
2 member of which is an owner of residential real property  
3 located within the association's jurisdiction, as  
4 described in the governing documents, and by virtue of  
5 membership or ownership of property is obligated to pay  
6 real property taxes, insurance premiums, maintenance  
7 costs, or for improvement of real property other than  
8 that which is owned by the member.

9           Then there's a definition of the term  
10 "governing documents" in the statute and the definition  
11 indicates that, "Governing documents" means the articles  
12 of incorporation, bylaws, plat, declaration of  
13 covenants, conditions and restrictions, rules and  
14 regulations of the association, or other written  
15 instrument by which the association has the authority to  
16 exercise any of the powers provided for in this chapter  
17 or to manage, maintain or otherwise affect the property  
18 under its jurisdiction.

19           It appears on the face of it that Admiral's  
20 Cove Association, Beach Club, whatever you want to call  
21 it, may not be a homeowners' association as that term is  
22 defined in the statute for the simple reason that there  
23 is a provision for so-called associate members who would  
24 not necessarily be property owners within Admiral's  
25 Cove.

1           I understand the defendants take issue with  
2 that, but, as I say, on the face of it it appears that  
3 Admiral's Cove is not a homeowners' association because  
4 it authorizes associate members who are not owners of  
5 property.

6           However, as I think we established in  
7 colloquy here with counsel for the plaintiff, regardless  
8 of whether Admiral's Cove is a homeowners' association  
9 for purposes of the statute, RCW 64.38, Admiral's Cove  
10 Association -- Beach Club, if you will -- has the  
11 authority granted to it in the governing documents,  
12 including the Articles of Incorporation, Bylaws, and  
13 Covenants, and, as I've gone through in some detail  
14 previously here, the Board of Directors of the  
15 Association clearly has the authority to levy  
16 assessments of one kind or another and all property in  
17 Admiral's Cove -- or all owners of property in Admiral's  
18 Cove must be members of the Association.

19           So I am ruling that regardless of whether  
20 the Association is a homeowners' association under the  
21 statutory definition, it still has the authority to levy  
22 assessments for the reasons I've already indicated.

23           Now, there is this interesting issue about  
24 whether RCW 64.38 applies to existing homeowners'  
25 associations. I've had some experience in other

1 litigation where it has essentially been conceded that  
2 it does; in other words, that the statute does apply to  
3 existing homeowners' associations assuming that those  
4 homeowners' associations meet the definition of that  
5 term in the statute, but, as I say, it's beside the  
6 point in terms of the ruling I need to make today, and I  
7 do rule that the Association does have the authority to  
8 levy assessments against the Close property.

9 I did also look at the case Louisiana Bureau  
10 of Credit Control, Inc. v. Landeche, L-A-N-D-E-C-H-E,  
11 6 S.3d 935, a Louisiana case from 2009 cited by the  
12 defendants, and that seems to be persuasive authority  
13 that the statute would apply to existing homeowners'  
14 associations and thus an existing homeowners'  
15 association would not be under any obligation to opt  
16 into the statute, as it were. But, again, it's not  
17 necessary for the Court to reach the issue one way or  
18 the other as to whether Admiral's Cove Association is a  
19 homeowners' association under the statute because,  
20 whether it is or isn't, the governing documents of the  
21 Association do authorize its Board of Directors to  
22 collect assessments from plaintiff Roger Close.

23 I find it unnecessary to reach other issues  
24 that might have been raised in the pleadings in  
25 connection with this motion. I find it unnecessary to

1 reach the motion to strike that was brought by the  
2 defendants in this matter given the ruling I've just  
3 made. I'll entertain the necessary order in due course.  
4 Any questions?

5 MR. BRANDT: I do, Your Honor. I appreciate  
6 the lengthy explanation. It's my intent to get the  
7 transcript because I think it will help the parties as  
8 we go forward from here.

9 If I can just be a hundred percent clear of  
10 what I think I've heard. While the -- Mr. Close, per  
11 your ruling, is subject to the levying and assessment  
12 power of the Association pursuant to the original Bylaws  
13 of '86 and the original Articles of Incorporation, and  
14 we have not reached any ruling to date on whether the  
15 newer versions of those were validly authorized. In  
16 terms of the summary judgment question, the central one  
17 we're here on today, what I think I heard you say is  
18 that the Association does not meet the requirements of  
19 64.38 to be determined to be a homeowners' association  
20 under that statute; is that correct?

21 THE COURT: Well, as I -- no, I said I  
22 didn't need to reach that issue because, regardless of  
23 whether the Board proceeds under the newly amended  
24 Articles and Bylaws or whether it proceeds under the  
25 authorities of the 1986 Bylaws, it has the authority to

1 levy assessments.

2 MR. BRANDT: So what I take away from that,  
3 that if this case proceeds to trial and the Court  
4 determines either one way or the other that there was  
5 validly or not validly adopted new Articles that would  
6 then put it within 64.38, that ultimately will determine  
7 whether any enforcement powers that stem from the  
8 statute take effect aside from the governing documents,  
9 correct?

10 THE COURT: That is probably so. I didn't  
11 address that issue one way or the other because it  
12 wasn't placed before me, but if it is true -- if it is  
13 true, counsel, that there is more power given to the  
14 Board under the statute than is given to the Board under  
15 its so-called governing documents and that becomes an  
16 issue, then it does sound like the Court would have to  
17 address the issue of whether this is a homeowners'  
18 association under the statute or whether it's not, in  
19 which case we fall back to the 1986 Bylaws. Does that  
20 answer your question?

21 MR. BRANDT: It does, Your Honor. And is it  
22 all right if we submit, hopefully, an agreed order next  
23 week once we get a transcript and flush out some of  
24 these things that I think would be helpful to the  
25 parties?

1                   THE COURT: Of course, and try to reach  
2 agreement, if you can, on the form of the order. If you  
3 can't, of course, you can note it up for presentation.  
4 Thank you.

5                   Any questions, Mr. Cameron?

6                   MR. CAMERON: No, Your Honor.

7                   THE COURT: Okay. Thank you all very much.  
8 That concludes our hearing today.

9                   (Whereupon, the proceedings in this matter  
10 were concluded for the day.)

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## C E R T I F I C A T E

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6 I, JEANNE M. WELLS, do hereby certify that  
7 the foregoing verbatim report of the Court's oral ruling  
8 was taken by me and completed on Friday, January 28,  
9 2011, and thereafter, transcribed by me by means of  
10 computer-aided transcription;

11 That I am not a relative, employee,  
12 attorney, or counsel of any such party to this action or  
13 relative or employee of any such attorney or counsel,  
14 and I am not financially interested in the said action  
15 or the outcome thereof;

16 That I am herewith retaining the original  
17 and emailing one copy to Michael D. Brandt.

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20  
21  
22 \_\_\_\_\_  
23 Jeanne M. Wells, RPR  
24 CCR #: 2298

25 February 2, 2011