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Hon. Alan R. Hancock
Hrg: 3/23/18 9:30

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

ROBERT WILBUR,
Plaintiff,
vs.
ADMIRAL'S COVE BEACH CLUB, a
Washington non-profit corporation;
Defendants.

NO. 13-2-00741-4
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT -

VALIDITY OF 2013 BALLOT TO
DECOMMISSION ADMIRAL'S
COVE SWIMMING POOL

SUE CORLISS,
Intervenor/Appellant,
vs.
ROBERT WILBUR, ADMIRAL'S COVE
BEACH CLUB, a Washington non-profit
corporation, and its BOARD OF
DIRECTORS,
Respondents.

I. RELIEF REQUESTED

Plaintiff, Robert Wilbur ("Wilbur") requests the entry of an Order granting summary judgment in his favor on a declaratory judgment issue described in this section. Specifically, the plaintiff requests declaratory relief in this matter determining, as a matter of law, that the 2013 ballot submitted to members by the Admiral's Cove Beach Club Board of Directors, ("Board") and the resulting decision to "decommission" the Admiral's Cove Beach Club ("ACBC") swimming pool, are void and unenforceable.

The ballot and resulting decision are void and unenforceable for two reasons.

1 First, the membership's 2013 vote and decision to decommission the pool has
2 been superseded by a March, 2016, membership decision in which the members of
3 ACBC clearly declared their desire to invalidate the 2013 ballot by approving the
4 imposition of a special assessment to fund repairs to the club swimming pool. The
5 ballot that was submitted to members in March, 2016, fully complied with the Bylaws
6 governing special assessments.

7 Second, the 2013 ballot is invalid because it did not afford club members the
8 opportunity to vote "no" to either or both of the two, proposed, alternative special
9 assessments, a violation of the Admiral's Cove Beach Club Bylaws. The bylaws
10 require that all special assessments be approved by vote of the membership. A
11 meaningful decision to approve a special assessment includes the ability to
12 disapprove the special assessment. Instead, the Board created a ballot in May of 2013
13 that gave the members the Draconian choice of voting for one of two special
14 assessments. The proposed assessment to decommission the ACBC swimming pool
15 was 1/3 the cost of the repair option. Not surprisingly, the less expensive option
16 received the most votes.

17 By failing to include on the 2013 ballot, the option of "disapproving" a special
18 assessment altogether, the Board's request for a membership vote on the 2013
19 special assessment was contrary to the bylaws and is therefore void.¹

20 II. PERTINENT FACTS

21 The owners of parcels of property within The Plat of Admiral's Cove, Division 1
22 through 7, are, by virtue of that ownership, active members of the Admiral's Cove
23 Beach Club, Inc., a Washington non-profit corporation. See, ACBC Bylaws, Art. III,
24 Sec. 2, attached as Ex. B to the Declaration of Kurt Blankenship ("Blankenship Decl.").
25 There are approximately 600 active members of ACBC. The ACBC Articles of
26 Incorporation and Bylaws govern the existence and activities of the club. Blankenship
Decl., Ex. A, Ex. B. These documents provide voting rights to all members in good

¹ The ballot submitted to members by the Board in May, 2013, requested consideration of a special assessment to either 1) decommission the swimming pool at a cost of app. \$200,000; or 2) repair the swimming pool at a cost of app. \$650,000. The option to reject a special assessment altogether was not included in the ballot.

1 standing to elect ACBC officers and directors and to allow establish ACBC policies
2 where such power is not exclusively reserved to the Board of Directors. Id., Ex. B, Art.
3 V, Sec. 1.

4 Article XIV of the ACBC Bylaws governs the allowable methods for the Board to
5 obtain revenue to carry out Club business each year. Annual assessments for regular
6 club operations are known as "dues;" whereas assessments for "unusual or
7 unexpected costs, maintenance, improvements, shall be known as 'special
8 assessments.'" Id., Ex. B, Art. XIV, Sec 2. Article XIV, Sections 3 of the Bylaws
9 explicitly provides that any special assessments must be approved by a majority vote
10 of the members.²

11 Only active ACBC members in good standing are entitled to vote on special
12 assessments. Id., Ex B, Art. V, Sec. 1. The Bylaws set forth that "[a] member shall be
13 in good standing if all current and back dues and/or assessments are paid, including a
14 payment plan approved by the Board where payments have been made, or are being
15 as agreed. A member in good standing during the previous year shall be considered
16 in good standing in the current year until such time as the current dues and/or
17 assessments are assigned and due. Dues and/or assessments shall normally be due
18 thirty (30) days after mailing." Id., Ex. B., Art. III, Sec. 4.

19 One of the primary recreational facilities available to members of ACBC is its
20 swimming pool, which is uniquely situated adjacent to the shores of Puget Sound.
21 Blankenship Decl., Ex. C. After many years during which the club failed to properly
22 maintain the swimming pool and related facilities, those facilities fell into a state of
23 disrepair to the point where extensive repairs became necessary. Pursuant to an
24 October, 2012 motion that was passed by the club members, the club investigated
25 repair and financing options with the goal of "having the pool open as soon as funding
26 and construction schedules allow." Blankenship Decl., Ex. D, pg. 5-6.

Following this investigation, in May, 2013, the then Board of Directors
presented a ballot to club members to vote on a special assessment related to the

² Art. XIV, Sec. 3 states as follows: "Special assessments may be proposed by the Board of Directors, or members, at any time and must be presented to the membership at least thirty (30) days prior to a meeting called in accordance with Article IV, of these bylaws. They shall require approval by a majority vote as required by ARTICLE V, Sections 2 or 4 of these Bylaws." Ex. B, Art. XIV, Sec. 3.

1 pool. Blankenship Decl., Ex. E. The 2013 ballot contained only two options. The first
2 option was to impose a special assessment in the amount of \$650,000 to fund the
3 necessary repairs to restore the pool. This number was arbitrary and not premised on
4 any specific bids or proposals. The second option was to impose a special
5 assessment in the amount of \$200,000 to decommission the pool. The ballot did not
6 contain a "no assessment" option or otherwise permit the members to vote against a
7 special assessment altogether.

8 The assessment to decommission the pool prevailed over the assessment to
9 repair the pool by a vote of 166 to 153. Blankenship Decl., Ex. F. When the Board of
10 Directors initiated steps to impose the \$200,000 assessment and decommission the
11 pool, Plaintiff filed this lawsuit. In addition to the permanent, injunctive relief precluding
12 the Board from decommissioning the swimming pool, Plaintiff's Complaint seeks
13 declaratory relief establishing, as a matter of law that, among other things, the 2013
14 ballot and the board's subsequent actions to implement it and decommission the pool
15 were in violation of the ACBC governing documents. See, Complaint, ¶ 4.8.1, ¶ 5.1.3.

16 On January 13, 2015, Plaintiff, Bob Wilbur, filed a Motion for Summary
17 Judgment seeking to prevail on his claims for injunctive and declaratory relief. See,
18 Plaintiff's Amended Motion for Summary Judgment. In deference to the conflicting
19 positions of the members, ACBC took no official position on the motion. See,
20 Defendant's Response to Plaintiff's Motion for Summary Judgment. With the Court's
21 authorization, Sue Corliss thereafter intervened in this action for purposes of opposing
22 Plaintiff's motion and filing a cross-motion for summary judgment of her own. See,
23 Order Granting Motion to Intervene.

24 On May 18, 2015, this Court entered its Order Granting in Part and Denying in
25 Part Plaintiff's Motion for Summary Judgment. In addition to declaring Intervenor's
26 Cross Motion for Summary Judgment moot, the Court's order denied Plaintiff's claims
for injunctive relief but granted Plaintiff's claims for declaratory relief, declaring as
follows:

1. The ACBC swimming pool and related facilities are among the athletic and recreational facilities contemplated under Art. V of the Articles of Incorporation of ACBC which provides that the purpose of ACBC is "[t]o

1 construct, install, maintain and/or own and operate athletic and recreational
2 facilities of all types and kinds for the benefits of the members.”

3 2. ACBC and its Board of Directors must adhere to the requirements
4 and directives set forth in the motion that was made and approved at the
5 Defendant’s annual membership meeting on October 27, 2012, unless said
6 motion is properly repealed or amended to remove the duties of the Board of
7 Directors and ACBC, which duties are presently embodied in this motion. That
8 particular motion, as approved, does not contain language that could be
9 construed as permitting the demolition or decommissioning of the swimming
10 pool or related facilities as an option for the membership’s future consideration.

11 3. The prior Board’s action to present a ballot to the membership
12 with the option to decommission the pool was contrary to the October 27, 2012
13 motion. It was therefore invalid and of no force and effect.

14 4. The prior Board’s action to authorize an assessment to demolish
15 or decommission the ACBC swimming pool and related facilities is invalid and
16 of no force and effect.

17 5. The October 25, 2014, motion presented to the membership and
18 characterized as the “Alternative Visions” motion does not supersede, repeal or
19 replace the content or directive set forth in the October 27, 2012 motion, which
20 remains in effect.

21 6. In consideration of the applicable provisions of the Articles of
22 Incorporation and Bylaws, the context in which they were promulgated, the
23 circumstances surrounding their promulgation, and the other rules for their
24 interpretation, the general power to dispose of property as set forth in the
25 Articles of Incorporation and Bylaws governing ACBC, does not provide
26 authority to the Board to dispose of the ACBC swimming pool and related
facilities.

7. Any vote on a motion or other action item submitted to the
membership at a regular or special meeting of the membership that would result
in the demolition or decommissioning of the ACBC swimming pool, would be
invalid and of no effect unless the governing documents of ACBC were first
properly amended or changed to allow such action.

8. Under the governing documents as presently constituted, the
members of the Board of Directors of ACBC have a legal duty and fiduciary
obligation:

- a. to maintain, repair and operate the swimming pool and its
related facilities in a reasonable manner and as may be
required by local, state and federal law and the governing
documents themselves; and

b. to take affirmative action, consistent with the governing documents of ACBC, to budget for and raise funds through properly authorized dues and assessments to carry out these duties.

9. The Board's duties in this regard include sufficient budgeting and funding decisions that will allow for the future and continued operation and maintenance of the swimming pool and related facilities.

10. When making decisions about funding and budgeting, including dues and assessments, the Board of Directors and Members of ACBC must adhere to the provisions of ACBC's Articles of Incorporation, Bylaws, and all local, state and federal law.

(Order Granting In Part And Denying In Part Plaintiff's Motion For Summary Judgment.)

The Court's Order also denied Plaintiff's request for this Court to retain continuing jurisdiction over the parties and subject matter, but in so doing the Order stated that "this Order in no way limits any party from seeking further and additional relief based upon facts and issues not presented in this case or facts that have arisen since the date of this court's Order." *Id.*, at p. 5, ln 24-29.

Intervenor subsequently appealed to Division One of the Washington Court of Appeals. During the pendency of that appeal in March, 2016, and because at no time did any party seek a stay of Court's summary judgment order, ACBC presented a new ballot to the membership whereby the members in good standing were to vote whether or not to approve two separate special assessments. Declaration of Ed Delahanty ("Delahanty Decl."), Ex. A.³ The first proposed special assessment would raise the necessary funds to renovate the pool and the second would raise additional funds to install new optional energy saving heat pumps. *Id.* Members also received an explanatory "ACBC Pool Renovation Ballot Q & A" and a brochure explaining the proposed special assessments. *Id.* Exs. B & C. Unlike the 2013 ballot, the March, 2016 ballot contained options to vote "no" on each of the assessments as required by the ACBC Bylaws. *Id.*, Ex. A.

³ This Declaration was originally submitted to the Court of Appeals in Opposition to Appellant/Intervenor's RAP 8.3 Motion for Stay.

1 The special assessment to renovate the pool passed by a 7% margin with the
2 tally 144 votes in favor and 125 votes against. Blankenship Decl., Ex. G. The
3 members rejected the proposed special assessment to install new heat pumps. *Id.*
4 Following the vote to approve the pool renovation assessment, the club began
5 collecting funds from the members. Blankenship Decl., ¶ 10. As of June, 2017, the
6 club has collected approximately \$400,000. *Id.*

7 While the appeal of this court's decision was pending review, Intervenor Corliss
8 moved the Court of Appeals to stay ACBC's Board from collecting any assessment
9 funds. On June 6, 2016, the Court of Appeals Commissioner ruled that, upon
10 Intervenor posting a supersedeas cash or bond in the amount of \$30,000 in the
11 Superior Court registry, a partial stay was granted to permit the ACBC board to collect
12 the funds and place them in a separate account not to be spent until the appeal
13 concluded. Declaration of Christopher J. Nye ("Nye Decl."), Ex. A. Intervenor never
14 posted the supersedeas cash or bond. See Declaration of Chris Nye. ACBC has
15 continued to collect the assessment funds from the members and has placed them in
16 a separate account. Blankenship Decl. To date the funds have not been spent and no
17 renovation work has begun. *Id.*

18 On August 1, 2016, the Court of Appeals reversed and remanded this Court's
19 summary judgment order, holding that as drafted, the ACBC governing documents
20 give ACBC the power to decommission the pool and that the October 2012 motion
21 passed by the membership did not prohibit ACBC from allowing members to vote
22 whether to decommission the pool. Nye Decl. Ex. B. Significantly, the Court of
23 Appeals did not hold that the 2013 ballot to decommission the pool was to be
24 enforced. *Id.* In fact, the Court of Appeals did not address that issue at all.

25 The decision of the Court of Appeals in this case addressed only two issues
26 that were presented in this case.

We conclude that the Club's current governing documents give it the power to
remove or decommission the pool. We also conclude that the October, 2012 motion
did not prohibit the Club from allowing the members to vote whether to remove the
pool.

Corliss, v. Frederick, et al, COA number 73725-2-1, page 11.

1 The Court of Appeals' decision does not address or dispose of all of the
2 declaratory relief that the Plaintiff requested in his Complaint for Declaratory
3 Judgment. Those issues are still before this court for consideration.

4 Although ACBC took no official position on Plaintiffs' prior Motion for Summary
5 Judgment, and could not take any action at the time in light of the temporary
6 injunction, the membership of ACBC made its intentions clear with the vote that took
7 place in March of 2016. By approving the special assessment to renovate the
8 swimming pool in 2016, the membership clearly invalidated or superseded the effect of
the 2013 ballot.

9 The decision of ACBC's members as expressed in that March, 2016 vote
10 should be honored and enforced. Accordingly, Plaintiff, a member in good standing of
11 ACBC, seeks a declaration from this court that the 2013 ballot to decommission the
12 swimming pool is null and void - both because it has been superseded by the March,
2016 member vote and because it violated the ACBC governing documents.

13 **III. STATEMENT OF ISSUES**

14 1. Should this Court declare or determine, as a matter of law, that the 2013
15 ballot to decommission the ACBC swimming pool is void and unenforceable since it
16 was superseded by the March, 2016 membership vote in which the membership
17 approved a special assessment to renovate the swimming pool and related facilities?

18 2. In order to comply with the ACBC Bylaws requiring member "approval" of
19 any and all special assessments, should a ballot proposing a special assessment over
20 and above annual dues, allow the members the option to vote "no?"

21 3. Should this Court determine, as a matter of law, that the May, 2013 ballot
22 and resulting decision to decommission the ACBC swimming pool, is void and
23 unenforceable because the form of the ballot did not allow the voting members the
option of "disapproving" either special assessment presented?

24 **IV. EVIDENCE RELIED UPON**

25 In addition to the documents of record previously filed with this Court, Plaintiff
26 relies upon the attached Declarations of Kurt Blankenship, Ed Delahanty, Christopher
J. Nye, as well as the exhibits attached to each. These exhibits were previously filed

1 with the court in connection with Defendant, ACBC's Motion for Summary Judgment
2 that was presented to the court on September 1, 2017.

3 The Plaintiff is also relying on the declaration of Robert Wilbur submitted in
4 support of his Amended Motion for Summary Judgment filed in 2015.

5 V. LAW & DISCUSSION

6 A. Summary Judgment

7 Pursuant to CR 56, summary judgment is appropriate where "the pleadings,
8 depositions, answers to interrogatories, and admissions on file, together with the
9 affidavits, if any, show that there is no genuine issue as to any material fact and that
10 the moving party is entitled to judgment as a matter of law. CR 56(c). "The rationale
11 underlying summary procedures is to eliminate trials where only questions of law
12 remain to be determined." *Brown v. Fire Prot. Dist.*, 100 Wn.2d 188, 203, 668 P.2d
13 571 (1983). An important function of the summary judgment procedure is "the
14 avoidance of long and expensive litigation productive of nothing." *Padron v. Goodyear*
15 *Tire*, 34 Wn.App. 473, 475, 662 P.2d 67 (1983). "Conclusory allegations, speculative
16 statements or argumentative assertions that unresolved factual matters remain are not
17 sufficient to preclude an order of summary judgment." *Turngren v. King County*, 33
18 Wn.App. 78, 84, 649 P.2d 153 (1982). Instead, the non-moving party must put forth
19 specific, disputed facts that are material to the legal issue before the court. *Id.*

20 As noted by the Court of Appeals in its decision pertaining to this case,

21 We interpret the governing documents of a corporation in accordance with
22 accepted rules of contract interpretation. *Roats v. Blakely Island Maint.*
23 *Comm'n. Inc.*, 169 Wn. App. 263, 273-74, 279 P.3d 943 (2012). We give the
24 words in a contract their plain, ordinary meaning unless the contract as a whole
25 clearly demonstrates a contrary intent. *4105 1st Ave. S. Invs., LLC v. Green*
26 *Depot WA Pac. Coast. LLC*, 179 Wn. App. 777, 784, 321 P.3d 254, review
denied, 181 Wn.2d 1004 (2014). Articles of incorporation and bylaws are
"correlated documents" that are construed together. *Roats*, 169 Wn. App. at
274 (quoting *Rodruck v. Sand Point Maint. Comm'n*, 48 Wn.2d 565, 577, 295
P.2d 714 (1956)). "[S]ummary judgment is proper if the parties' written contract,
viewed in light of the parties' other objective manifestations, has only one
reasonable meaning." *Go2Net. Inc. v. C I Host. Inc.*, 115 Wn. App. 73, 85, 60

1 P.3d 1245 (2003) (quoting *Hall v. Custom Craft Fixtures, Inc.*, 87 Wn. App. 1, 9,
2 937 P.2d 1143 (1997)).⁴

3 *Corliss, v. Frederick, et al*, COA number 73725-2-1, page 8.

4 It is undisputed that the Bylaws governing the Board's ability to impose special
5 assessments requires "approval" of the members at a meeting scheduled with at least
6 30 days prior notice to the membership. (Article XIV, Section 3.) It is also undisputed
7 that the ballot provided to the membership at the May, 2013, membership meeting
8 provided the members with only two options: 1) approve an assessment to
9 decommission the pool; or 2) approve an assessment to repair the pool. The ballot did
10 not contain the option to disapprove any assessment or both.

11 It is also undisputed that the members of ACBC have reconsidered and revised
12 their decision about what to do with the swimming pool in a vote taken in March of
13 2016. No genuine issue of material fact exists on this question either. The only issue
14 presented by these undisputed facts is whether the court should declare, as a matter
15 of law, that the May 2013, ballot and resulting decision are invalid and unenforceable
16 for the reasons set forth in this motion.

17 B. Declaratory Judgment

18 Plaintiff's Complaint asserts claims for declaratory relief relative to the validity of
19 the 2013 ballot to decommission the pool. The purpose of the Uniform Declaratory
20 Judgments Act, RCW Ch. 7.24. *et seq.*, is "to settle and afford relief from uncertainty
21 and insecurity with respect to rights, status and other legal relations; and is not be
22 liberally construed and administered." RCW 7.24.120. Absent issues of major public
23 importance, a justiciable controversy must exist before a court's jurisdiction may be
24 invoked under the act. *DeNino v. State ex rel. Gorton*, 102 Wn.2d 327, 330, 684 P.2d
25 1297 (1984). For purposes of warranting declaratory relief, a justiciable controversy is:

26 ⁴ The Washington Court of Appeals' decision in *Corliss v. Wilbur et al*, COA case number 73725-2-1, is
an unpublished opinion. The excerpt cited above is provided for contextual reference since the court
cites other sources for each conclusion. Pursuant to GR 14.1(a), this court may accord the excerpt such
"persuasive value" as the court deems appropriate.

1 (1) ... and actual, present and existing dispute, or the mature seeds of one, as
2 distinguished from a possible, dormant, hypothetical, speculative, or moot
3 disagreement, (2) between parties having genuine and opposing interests, (3)
4 which involves interests that must be direct and substantial, rather than
5 potential, theoretical, abstract or academic, and (4) a judicial determination of
6 which will be final and conclusive.

7 Id. at 330-331 (citing *Clallam Co. Deputy Sheriff's Guild v. Board of Clallam Co.*
8 *Comm'rs*, 92 Wn.2d 844, 848, 601 P.2d 943 (1979)).

9 This Court has already determined that the controversy at issue this case and
10 the conflicting interests between the parties relative to the ACBC swimming pool and
11 related facilities presents a justiciable controversy appropriate for declaratory relief.
12 That determination was not upset on appeal. Nye Decl., Ex. B.

13 From the outset, the legal issues in this case involve the interpretation of the
14 ACBC Articles of Incorporation and Bylaws, which are "a contract, and govern, save as
15 statute may otherwise provide, the rights of the parties." *In re Dissolution of Olympic*
16 *Nat'l Agencies, Inc. v. Selak*, 74 Wn.2d 1, 4, 442 P.2d 246 (1968). The Articles of
17 Incorporation and Bylaws of a non-profit corporation are "correlated documents" that
18 are construed together. *Roats v. Blakely Island Maintenance Commission, Inc.* 169
19 Wn.App. 263, 274, 279 P.2d 943 (2012) (quoting *Rodruck v. Sand Point Main.*
20 *Comm'n*, 48 Wn.2d 565, 577, 295 P.2d 714 (1956)). The governing documents of a
21 corporation are interpreted in accordance with accepted rules of contract
22 interpretation. *Roats*, 169 Wn. App at 274.

23 The issue of the validity of the 2013 ballot has been before this court since the
24 inception of the case. Plaintiff's Complaint seeking a declaration that the 2013 ballot is
25 invalid alleged that the 2013 ballot violated the terms of the ACBC governing
26 documents. See, Complaint, ¶ 4.8.1. Whether the March, 2016 ballot, in which the
membership clearly changed its mind about decommissioning the pool, renders the
2013 ballot invalid is also properly before this court.

This Court explicitly stated in its order on summary judgment that "this Order in
no way limits any party from seeking further and additional relief based upon facts and
issues not presented in this case or facts that have arisen since the date of this court's
Order." See, Order Granting In Part And Denying in Part Plaintiff's Motion for

1 Summary Judgment, p. 5, In 24-29. The March, 2016 ballot occurred after this Court's
2 prior summary judgment ruling.

3 C. The March, 2016 Vote Nullifies and Supersedes the 2013 Vote

4 There is no Washington law, and no provision of the ACBC governing
5 documents, which precludes the club from changing its mind when it comes to the
6 handling of club property or affairs. That is exactly what has happened in this case.
7 Although the 2013 ballot resulted in a decision by a narrow majority to impose a
8 special assessment to decommission the pool, in March, 2016, the club decided by a
9 larger majority to approve a special assessment to renovate and repair the pool.
10 Blankenship Decl., Exs. F & G. The March, 2016 special assessment ballot was
11 presented to and voted upon by the eligible members in good standing in complete
12 compliance with the ACBC governing documents setting forth the requirements and
13 procedures for approving special assessments. Blankenship Decl., ¶ 9.

14 Intervenor has argued from the outset of her involvement in this case that the
15 2013 ballot decision should be enforced and implemented because it represented the
16 will of the club members after exercising their democratic rights under the ACBC
17 governing documents. The club members have now exercised those same
18 democratic rights under the ACBC governing documents to invalidate the 2013 ballot
19 to decommission the pool and instead impose a special assessment to fund the
20 necessary repairs to renovate the club's unique swimming pool for the use and
21 enjoyment of its members. Blankenship Decl., Ex. G.

22 Accordingly, this Court should also declare, as a matter of law, that the 2013
23 vote to decommission the pool is null and void on the grounds that it has been
24 superseded by the March, 2016 vote of the ACBC members. As this Court has
25 previously stated, "it is axiomatic that the board must adhere to votes passed by
26 membership if consistent with governing documents." Nye Decl., Ex. C, P. 91, In 19-
27 25.

28 Alternatively, this Court may determine that the passage of the valid March,
29 2016 special assessment to repair the pool renders the validity of the 2013 ballot moot
30 and therefore dismiss this case on mootness grounds. A case is moot where "it
31 involves only abstract propositions or questions, the substantial questions in the trial

1 court no longer exist, or a court can no longer provide effective relief.” *Washington*
2 *State Communication Access Project v. Regal Cinemas, Inc.*, 173 Wn.App. 174, 203,
3 293 P.3d 413, 429 (2013). Here, Plaintiff filed this case challenging the validity of the
4 2013 ballot to decommission the pool. The ACBC membership has changed its mind
5 about decommissioning the pool and has subsequently voted to repair it. Thus, the
6 “substantial question” Plaintiff put before this court regarding the validity of the 2013
7 ballot arguably no longer exists and dismissal on mootness grounds may be
8 appropriate.

8 D. The 2013 Ballot to Decommission the Pool Violated the ACBC Bylaws

9 Not only has the 2013 ballot been invalidated and superseded by the March,
10 2016 vote to approve the special assessment to repair the pool, but it was invalid on
11 its face at the time it was presented to the ACBC members for a vote in 2013 because
12 it violated the express terms of the ACBC Bylaws governing special assessments.

13 Article XIV, Section 3 of the ACBC Bylaws governs the imposition of special
14 assessments to club members. That bylaw states:

14 Section 3 – SPECIAL ASSESSMENTS

15
16 Special Assessments may be proposed by the Board of Directors, or
17 members, at any time and must be presented to the membership at least
18 thirty (30) days prior to a meeting called in accordance with ARTICLE IV,
19 of these bylaws. **They shall require approval by a majority vote as**
20 **required by ARTICLE V, Section 2 or 4 of these Bylaws.**

19 Blankenship Decl., Ex. B.

20 This bylaw is absolutely clear that all special assessments must be approved by
21 the membership. Implicit in this directive is that members have the right to reject any
22 proposed special assessment.

23 Since the Board members who approved the form of the ballot prior to the May,
24 2013, membership meeting, estimated that the cost of repair was going to be three
25 times the cost of removal, it is no surprise that a majority (narrow as it was) of those
26 members who cast ballots at the May, 2013, meeting favored the less expensive
alternative.

1 The 2013 vote was invalid and flawed because members were provided this
2 “lesser of two evils” approach to the assessment process rather than the required
3 ability to approve or disapprove each assessment individually. Specifically, the
4 members were given only two options in voting on the 2013 ballot: they could vote to
5 approve the \$200,000 special assessment to fund the decommissioning of the pool or
6 vote to approve the \$650,000 special assessment to fund necessary repairs to the
7 pool. Id. The manner in which the 2013 ballot was drafted was not only contrary to
8 the requirements of the bylaws, it was very misleading because it created the
9 appearance that disapproving one or both assessments was not an option. See,
10 Blankenship Decl., Ex. E.

11 Conversely, the March, 2016, ballot presenting two proposed special
12 assessments was carefully drafted by the board to comply with the bylaws and,
13 specifically, Art. XIV, Sec. 3. See, Blankenship Decl., ¶ 9. With that ballot, the
14 members were given the opportunity to approve or reject each of the proposed special
15 assessments as is their right. See Delahanty Decl., Ex. A. The March, 2016 ballot
16 stands in stark contrast to the 2013 ballot and demonstrates how the 2013 ballot
17 should have been drafted by the board if it was to comply with the ACBC bylaws.

18 Because the 2013 ballot failed to comply with club bylaws giving members the
19 ability to disapprove a proposed special assessment (an inherent element of the
20 process of “approval”), this Court should declare as a matter of law that the 2013 ballot
21 is invalid on its face and of no legal force or effect.

22 VI. CONCLUSION


23 The facts upon which this motion is based are undisputed. The May 2013 ballot
24 was flawed due to the fact that it had no option for members to vote “no” to the
25 proposed assessments. That decision was contrary to the Bylaws and is therefore
26 void. Also, In March, 2016, the ACBC Board of Directors presented a new ballot to its
members – this time complying with the club’s governing documents in all respects –
asking them whether or not they wished to pay to renovate the club’s unique
swimming pool for the continued use and enjoyment of the members. Despite being
given the opportunity to reject the special assessment on this occasion, the majority

1 responded with a resounding "yes" and in so doing clarified the membership's desire
2 to invalidate the results of the prior ballot to decommission the swimming pool.

3 For all of the foregoing reasons, this Court should grant this Motion for
4 Summary Judgment and enter a declaratory judgment as a matter of law declaring that
5 the 2013 ballot to decommission the ACBC swimming pool is void and unenforceable
6 and of no legal force or effect. Further the court should declare that the 2013 vote,
7 regardless of its validity, has been superseded by the March, 2016 vote approving a
8 special assessment to renovate the pool and because it violated the express terms of
9 the ACBC Bylaws requiring member approval of all special assessments.

10 DATED this 22nd day of February, 2018.

11 Law Office of Christon C. Skinner, P.S.

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14 By: 

15 Christon C. Skinner, WSBA #9515
16 Attorney for Plaintiff, Robert Wilbur
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