

SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF ISLAND

ROBERT WILBUR and DUSTIN
FREDERICK,

Plaintiffs,

vs.

ADMIRAL'S COVE BEACH CLUB, a
Washington non-profit corporation;

Defendants.

SUE CORLISS,

Intervenor/Appellant,

vs.

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

Respondents.

NO. 13-2-00741-4

DEFENDANT ADMIRAL'S COVE
BEACH CLUB'S MOTION FOR
SUMMARY JUDGMENT RE:
VALIDITY OF 2013 BALLOT TO
DECOMMISSION POOL

I. RELIEF REQUESTED

Defendant Admiral's Cove Beach Club ("ACBC") respectfully requests that this court grant Plaintiff's request for declaratory judgment declaring that the 2013 ballot to decommission the ACBC swimming pool is null and void for two reasons. First, the 2013

1 club membership, through a democratic vote that was valid and enforceable under the club's
2 governing documents, clearly declared its desire to invalidate the 2013 ballot and impose a
3 special assessment to fund repairs to the club swimming pool. Second, the 2013 ballot was
4 invalid on its face because it did not afford the club members the opportunity to vote down a
5 special assessment in violation of the ACBC Bylaws, which require that all special assessments
6 be approved by vote of the membership.

7 II. PERTINENT FACTS

8 As the Court is aware, and as numerous prior briefs to this Court have explained, the
9 owners of parcels of property within The Plat of Admiral's Cove, Division 1 through 7, are
10 active members of the Admiral's Cove Beach Club, Inc., a Washington non-profit corporation.
11 See, ACBC Bylaws, Art. III, Sec. 2, attached as Ex. B to the Declaration of Kurt Blankenship
12 ("Blankenship Decl."). There are approximately 600 active members of ACBC. The ACBC
13 Articles of Incorporation and Bylaws govern the existence and activities of the club.
14 Blankenship Decl., Ex. A, Ex. B. These documents provide voting rights to all members in
15 good standing to elect ACBC officers and directors and to democratically set ACBC policies
16 where such power is not exclusively reserved to the Board of Directors. Id., Ex. B, Art. V,
17 Sec. 1.

18 Article XIV of the ACBC Bylaws governs the raising of funds to carry out Club
19 business. Annual assessments for regular club operations are known as "dues" and
20 assessments for "unusual or unexpected costs, maintenance, improvements, shall be known as
21 'special assessments.'" Id., Ex. B, Art. XIV, Sec 2. Article XIV, Section 3 of the Bylaws
22 explicitly provides that any special assessments must be approved by a majority vote of the
23 members.¹ Only active ACBC members in good standing are entitled to vote on special
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25 ¹ 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 assessments. Id., Ex B, Art. V, Sec. 1. The Bylaws set forth that “[a] member shall be in good
2 standing if all current and back dues and/or assessments are paid, including a payment plan
3 approved by the Board where payments have been made, or are being as agreed. A member
4 in good standing during the previous year shall be considered in good standing in the current
5 year until such time as the current dues and/or assessments are assigned and due. Dues and/or
6 assessments shall normally be due thirty (30) days after mailing.” Id., Ex. B., Art. III, Sec. 4.

7 One of the primary recreational facilities of ACBC is its swimming pool, which is
8 uniquely situated adjacent to the shores of Puget Sound. Blankenship Decl., Ex. C. After
9 many years of the club failing to properly maintain the swimming pool and related facilities,
10 they fell into a state of disrepair to the point extensive repairs are necessary. Pursuant to an
11 October, 2012 motion that was passed by the club members, the club investigated repair and
12 financing options with the goal of “having the pool open as soon as funding and construction
13 schedules allow.” Blankenship Decl., Ex. D, pg. 5-6. Following this investigation, in May,
14 2013, the then Board of Directors presented a ballot to club members to vote on a special
15 assessment related to the pool. Blankenship Decl., Ex. E. The 2013 ballot contained only two
16 options. The first option was to impose a special assessment in the amount of \$650,000 to
17 fund the necessary repairs to restore the pool. The second option was to impose a special
18 assessment in the amount of \$200,000 to decommission the pool. The ballot did not contain a
19 “no assessment” option or otherwise permit the members to vote against a special assessment
20 altogether.

21 The assessment to decommission the pool prevailed over the assessment to repair the
22 pool by a vote of 166 to 153. Blankenship Decl., Ex. F. When the Board of Directors initiated
23 steps to impose the \$200,000 assessment and decommission the pool, Plaintiff filed this
24 lawsuit. In addition to permanent injunctive relief precluding the Club from decommissioning
25 the pool, which this Court has already denied on summary judgment, Plaintiff’s Complaint
seeks declaratory relief establishing as a matter of law that, among other things, the 2013 ballot

1 and the board's subsequent actions to implement it and decommission the pool were in
2 violation of the ACBC governing documents. See, Complaint, ¶ 4.8.1, ¶ 5.1.3.

3 Plaintiff filed a Motion for Summary Judgment seeking to prevail on his claims for
4 injunctive and declaratory relief. See, Plaintiff's Amended Motion for Summary Judgment. In
5 deference to the conflicting positions of the members, ACBC took no official position on the
6 motion. See, Defendant's Response to Plaintiff's Motion for Summary Judgment. With the
7 Court's authorization, Sue Corliss thereafter intervened in this action for purposes of opposing
8 Plaintiff's motion and filing a cross-motion for summary judgment of her own. See, Order
9 Granting Motion to Intervene.

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

14 1. The ACBC swimming pool and related facilities are among the athletic and
15 recreational facilities contemplated under Art. V of the Articles of Incorporation of ACBC
16 which provides that the purpose of ACBC is "[t]o construct, install, maintain and/or own and
17 operate athletic and recreational facilities of all types and kinds for the benefits of the
18 members."

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

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

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

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

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

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

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

- 21 a. to maintain, repair and operate the swimming pool and its related
22 facilities in a reasonable manner and as may be required by local, state
23 and federal law and the governing documents themselves; and
24 b. to take affirmative action, consistent with the governing documents of
25 ACBC, to budget for and raise funds through properly authorized dues
and assessments to carry out these duties.

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

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

7 *See, Order Granting In Part And Denying In Part Plaintiff’s Motion For Summary Judgment.*
8 The Court’s Order also denied Plaintiff’s request for this Court to retain continuing jurisdiction
9 over the parties and subject matter, but in so doing the Order stated that “this Order in no way
10 limits any party from seeking further and additional relief based upon facts and issues not
11 presented in this case or facts that have arisen since the date of this court’s Order.” *Id.*, at p. 5,
12 In 24-29.

13 Intervenor subsequently appealed to Division One of the Washington Court of Appeals.
14 During the pendency of that appeal in March, 2016, and because at no time did any party seek
15 a stay of Court’s summary judgment order, ACBC presented a new ballot to the membership
16 whereby the members in good standing were to vote whether or not to approve two separate
17 special assessments. Declaration of Ed Delahanty (“Delahanty Decl.”), Ex. A.² The first
18 would raise the necessary funds to renovate the pool and the second would raise additional
19 funds to install new optional energy saving heat pumps. *Id.* Members also received an
20 explanatory “ACBC Pool Renovation Ballot Q & A” and a brochure explaining the proposed
21 special assessments. *Id.*, Exs. B & C. Unlike the 2013 ballot, the March, 2016 ballot contained
22 options to vote “no” on each of the assessments as required by the ACBC Bylaws. *Id.*, Ex. A.

23 The special assessment to renovate the pool passed by a 7% margin with the tally 144
24 votes in favor and 125 votes against. Blankenship Decl., Ex. G. The members rejected the
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² This Declaration was originally submitted to the Court of Appeals in Opposition to Appellant/Intervenor’s RAP 8.3 Motion for Stay.

1 proposed special assessment to install new heat pumps. Id. Following the vote to approve the
2 pool renovation assessment, the club began collecting funds from the members. Blankenship
3 Decl., ¶ 10. To date, the club has collected approximately \$400,000. Id. Intervenor moved
4 the Court of Appeals to stay the club's efforts to collect any assessment funds and on June 6,
5 2016 the Court ruled that upon Intervenor posting a supersedeas cash or bond in the amount of
6 \$30,000 in the Superior Court registry, a partial stay was granted to permit the ACBC board to
7 collect the funds and place them in a separate account not to be spent until the appeal
8 concluded. Declaration of Christopher J. Nye ("Nye Decl."), Ex. A. Intervenor never posted
9 the supersedeas cash or bond. Nye Decl. ACBC has continued to collect the assessment funds
10 from the members and have placed them in a separate account. Blankenship Decl. To date
11 the funds have not been spent and no renovation work has begun. Id.

12 On August 1, 2016, the Court of Appeals reversed and remanded this Court's summary
13 judgment order, holding that as drafted, the ACBC governing documents give ACBC the
14 power to decommission the pool and that the October 2012 motion passed by the membership
15 did not prohibit ACBC from allowing members to vote whether to decommission the pool.
16 Nye Decl. Ex. B. Significantly, the Court of Appeals did not hold that the 2013 ballot to
17 decommission the pool was to be enforced. Id.

18 Although ACBC took no official position on Plaintiffs' prior Motion for Summary
19 Judgment, and could not take any action at the time in light of the temporary injunction, the
20 membership of ACBC has made its wishes clear through the March 2016 special assessment
21 ballot that it wants to invalidate the 2013 ballot once and for all and proceed with renovation
22 of the club swimming pool and related facilities. ACBC now takes the position that the
23 decision of its members should be honored and enforced. Blankenship Decl., ¶ 11.
24 Accordingly, ACBC now seeks a declaration from this court that the 2013 ballot to
25 decommission the 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.

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III. STATEMENT OF ISSUES

1. Should this Court grant, as a matter of law, declaratory judgment declaring that the 2013 ballot to decommission the ACBC swimming pool is null and void on the grounds that it has been superseded by March, 2016 vote in which the membership approved a special assessment to renovate the swimming pool and related facilities?

2. Should this Court grant, as a matter of law, declaratory judgment declaring that the 2013 ballot to decommission the ACBC swimming pool is null and void on the grounds that it violated the ACBC Bylaws requiring member approval of all special assessments where the ballot did not give members the option to decline the proposed special assessments altogether?

IV. EVIDENCE RELIED UPON

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

V. ARGUMENT

A. Summary Judgment

Pursuant to CR 56, summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. CR 56(c). “The rationale underlying summary procedures is to eliminate trials where only questions of law remain to be determined.” *Brownv. Fire Prot. Dist.*, 100 Wn.2d 188, 203, 668 P.2d 571 (1983). An important function of the summary judgment procedure is “the avoidance of long and expensive litigation productive of nothing.” *Padron v. Goodyear Tire*, 34 Wn.App. 473, 475, 662 P.2d 67 (1983). “Conclusory allegations, speculative statements or argumentative assertions that unresolved factual matters remain are not sufficient to preclude an order of summary judgment.” *Turngren*

1 v. *King County*, 33 Wn.App. 78, 84, 649 P.2d 153 (1982). Instead, the non-moving party must
2 put forth specific, disputed facts that are material to the legal issue before the court. *Id.*

3 B. Declaratory Judgment

4 Plaintiff's Complaint asserts claims for declaratory relief relative to the validity of the
5 2013 ballot to decommission the pool. The purpose of the Uniform Declaratory Judgments
6 Act, RCW Ch. 7.24. *et seq.*, is "to settle and afford relief from uncertainty and insecurity with
7 respect to rights, status and other legal relations; and is not be liberally construed and
8 administered." RCW 7.24.120. Absent issues of major public importance, a justiciable
9 controversy must exist before a court's jurisdiction may be invoked under the act. *DeNino v.*
10 *State ex rel. Gorton*, 102 Wn.2d 327, 330, 684 P.2d 1297 (1984). For purposes of warranting
11 declaratory relief, a justiciable controversy is:

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

18 *Id.* at 330-331 (citing *Clallam Co. Deputy Sheriff's Guild v. Board of Clallam Co. Comm'rs*,
19 92 Wn.2d 844, 848, 601 P.2d 943 (1979)).

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

24 As from the outset, the legal issues in this case involve the interpretation of the ACBC
25 Articles of Incorporation and Bylaws, which are "a contract, and govern, save as statute may
otherwise provide, the rights of the parties." *In re Dissolution of Olympic Nat'l Agencies, Inc.*
v. Selak, 74 Wn.2d 1, 4, 442 P.2d 246 (1968). The Articles of Incorporation and Bylaws of a
non-profit corporation are "correlated documents" that are construed together. *Roats v. Blakely*

1 *Island Maintenance Commission, Inc.* 169 Wn.App. 263, 274, 279 P.2d 943 (2012) (quoting
2 *Rodruck v. Sand Point Main. Comm'n*, 48 Wn.2d 565, 577, 295 P.2d 714 (1956)) The
3 governing documents of a corporation are interpreted in accordance with accepted rules of
4 contract interpretation. *Roats*, 169 Wn. App at 274.

5 The issue of the validity of the 2013 ballot has been before this court since the inception
6 of the case. Plaintiff's Complaint seeking a declaration that the 2013 ballot is invalid alleged
7 that the 2013 ballot violated the terms of the ACBC governing documents. *See*, Complaint, ¶
8 4.8.1. Whether the March 2016 ballot, in which the membership clearly changed its mind
9 about decommissioning the pool, renders the 2013 ballot invalid is also properly before this
10 court. This Court explicitly stated in its order on summary judgment that "this Order in no
11 way limits any party from seeking further and additional relief based upon facts and issues not
12 presented in this case or facts that have arisen since the date of this court's Order." *See*, Order
13 Granting In Part And Denying in Part Plaintiff's Motion for Summary Judgment, p. 5, ln 24-
14 29. The March, 2016 ballot occurred after this Court's prior summary judgment ruling.

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

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

25 Intervenor has argued from the outset of her involvement in this case that the 2013
ballot decision should be enforced and implemented because it represented the will of the club

1 members after exercising their democratic rights under the ACBC governing documents. The
2 club members have now exercised those same democratic rights under the ACBC governing
3 documents to invalidate the 2013 ballot to decommission the pool and instead impose a special
4 assessment to fund the necessary repairs to renovate the club's unique swimming pool for the
5 use and enjoyment of its members. Blankenship Decl., Ex. G.

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

11 Alternatively, this Court may determine that the passage of the valid March, 2016
12 special assessment to repair the pool renders the validity of the 2013 ballot moot and therefore
13 dismiss this case on mootness grounds. A case is moot where "it involves only abstract
14 propositions or questions, the substantial questions in the trial court no longer exist, or a court
15 can no longer provide effective relief." *Washington State Communication Access Project v.*
16 *Regal Cinemas, Inc.*, 173 Wn.App. 174, 203, 293 P.3d 413, 429 (2013). Here, Plaintiff filed
17 this case challenging the validity of the 2013 ballot to decommission the pool. The ACBC
18 membership has changed its mind about decommissioning the pool and have subsequently
19 voted to repair it. Thus, the "substantial question" Plaintiff put before this court regarding the
20 validity of the 2013 ballot arguably no longer exists and dismissal on mootness grounds may
21 be appropriate.

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

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

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

3 Section 3 – SPECIAL ASSESSMENTS

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

10 Blankenship Decl., Ex. B. This bylaw is absolutely clear that all special assessments must be
11 approved by the membership. Implicit in this directive is that members have the right to reject
12 any proposed special assessment.

13 The 2013 ballot as presented to the members, however, never afforded the opportunity
14 to reject either proposed special assessment. Blankenship Decl., Ex. E. Rather, the members
15 were given only two options in voting on the 2013 ballot: they could vote to approve the
16 \$200,000 special assessment to fund the decommissioning of the pool or vote to approve the
17 \$650,000 special assessment to fund necessary repairs to the pool. Id. Consequently, the 2013
18 ballot necessarily imposed a special assessment on the club members in the minimum amount
19 of \$200,000. It precluded club members from rejecting the imposition of a special assessment
20 altogether as is their right under Art. XIV, Section 3 of the ACBC Bylaws. For this reason,
21 the current Board of Directors correctly believes the 2013 ballot was in violation of the ACBC
22 Bylaws. Blankenship Decl., ¶ 6.

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

1 Because the 2013 ballot failed to comply with club bylaws giving members the right to
2 reject special assessments, this Court should declare as a matter of law that the 2013 ballot is
3 invalid on its face and of no legal force or effect.

4 VI. CONCLUSION

5 The facts upon which this motion is based are undisputed. Simply put, in March, 2016,
6 the ACBC Board of Directors presented a new ballot to its members – this time complying
7 with the club’s governing documents in all respects – asking them whether or not they wished
8 to pay to renovate the club’s unique swimming pool for the continued use and enjoyment of
9 the members. Despite being given the opportunity to reject the special assessment on this
10 occasion, the majority responded with a resounding “yes” and in so doing clarified the
11 membership’s desire to invalidate the results of the prior ballot to decommission the swimming
12 pool.

13 For all of the foregoing reasons, this Court should grant this Motion for Summary
14 Judgment and enter a declaratory judgment as a matter of law declaring that the 2013 ballot to
15 decommission the ACBC swimming pool is null and void and of no legal force or effect
16 because it has been superseded by the March, 2016 vote approving a special assessment to
17 renovate the pool and because it violated the express terms of the ACBC Bylaws requiring
18 member approval of all special assessments.

19 DATED this 30 day of June, 2017.

20 REED McCLURE

21 By 

22 Christopher J. Nye, WSBA #29690
23 Attorney for Defendants
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25