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

ROBERT WILBUR and DUSTIN)
FREDERICK,)
)
Plaintiffs,)
)
vs.)
)
ADMIRAL'S COVE BEACH CLUB, a)
Washington non-profit)
corporation; and JEAN SALLS,)
MARIA CHAMBERLAIN, KAREN)
SHAAK, ROBERT PEETZ, ELSA)
PALMER, ED DELAHANTY and DAN)
JONES, individuals,)
)
Defendants.)

Cause No: 13-2-00741-4

Verbatim Report of Court's Oral Ruling

BE IT REMEMBERED, that on Wednesday,
November 27, 2013, 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 plaintiffs appeared through their
attorney, Christon C. Skinner;

The defendants Admiral's Cove Beach Club and
individuals Jean Salls, Maria Chamberlain, Karen Shaak,

Exhibit A

1 Robert Peetz, and Dan Jones appeared through their
2 attorneys, Vasudev N. Addanki and David R. Greenberg;

3 The defendants Elsa Palmer and Ed Delahanty
4 appeared through their attorney, Marilee C. Erickson.

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

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1 THE COURT: I'm prepared to rule at this
2 time on the plaintiffs' motion for a temporary or
3 preliminary injunction as to certain issues and also the
4 plaintiffs' motion for contempt.

5 The parties have placed a stipulation of
6 record that will continue the restraint in the first
7 paragraph or first section of the temporary restraining
8 order, and that's acknowledged and I so order. That is
9 the provision that says that the defendants, et cetera,
10 are enjoined from taking any action, including the
11 employment of third parties, contractors or
12 subcontractors, which action furthers or allows, in any
13 manner, the demolition, decommissioning, filling,
14 damaging, destroying, covering, inactivating, altering,
15 or otherwise rendering unusable, temporarily or
16 otherwise, the swimming pool complex and all related
17 facilities owned and operated by the Admiral's Cove
18 Beach Club and located within the Plat of Admiral's
19 Cove.

20 The other relief that is sought by the
21 plaintiffs in the motion for the preliminary injunction
22 is that the defendants should be enjoined from imposing
23 and levying a special assessment of any kind against the
24 lots in Admiral's Cove for the purpose of paying any
25 costs associated with the decommissioning of the pool,

1 et cetera, and I'm just paraphrasing that.

2 The motion also sought injunction enjoining
3 the defendants from attempting to take any action
4 contrary to or inconsistent with the October 27, 2012,
5 motion at the meeting on that date.

6 The plaintiffs also seek an injunction
7 enjoining the defendants from taking any action at the
8 2013 annual meeting -- or by implication any annual
9 meeting that would be ordered by the Court, if the
10 motion is granted, in early 2014 -- that would deny or
11 refuse a nomination -- deny or refuse to accept a
12 nomination for director of any member of the corporation
13 who's in good standing or prevent a member of the
14 corporation in good standing from running for election
15 to the Board, and the motion speaks for itself in this
16 connection.

17 Also before the Court is plaintiffs' motion
18 for contempt, and the plaintiffs seek the relief sought
19 in the motion. They contend that the Board violated the
20 temporary injunction in the way that they have asserted
21 and therefore should be held in contempt.

22 The plaintiffs have presented a proposed
23 order that sets forth the relief that they are seeking,
24 and so I take it that that is the relief sought by the
25 plaintiffs.

1 On September the 11th of 2013, the Court
2 entered a temporary restraining order which has been
3 continued by agreement. This dispute in this case
4 concerns the future of the beach club's swimming pool.
5 The record shows that the pool needs repairs and
6 apparently needs to be brought into compliance with the
7 Americans with Disabilities Act, among other things.

8 On October 27, 2012, the membership of the
9 beach club held its annual meeting -- or the annual
10 meeting of the beach club was held, a membership
11 meeting. At that time, the membership passed a motion
12 which is part of the record in this case. The motion
13 provided that the committees of the beach club were to
14 identify and evaluate various options relating to the
15 pool's future, including but not limited to needed
16 equipment, a permanent pool cover, and repairs to the
17 pool and its building, foundation, plumbing, and
18 electrical system and to recommend the best cost and
19 timing options. The motion further stated that a basic
20 and simple plan to identify projects for contractor
21 bidding shall be developed to guide these efforts. The
22 plan shall also recommend an implementation schedule for
23 ADA compliance from both a financial and legal
24 standpoint. The motion also provided that the
25 committees would investigate and develop payment options

1 related to assessment costs and dues under task 1 and to
2 select the approach that produces the best balance
3 between recreational benefits and costs to members. The
4 assessment total will be offset by the amount of
5 donations accumulated for that purpose.

6 And, finally, the motion said that upon
7 completion of tasks 1 and 2 the committees shall submit
8 the findings to the Board and subsequently work with the
9 Board as appropriate.

10 The motion also set forth the nature of
11 these committees that would be formed for these
12 purposes. Perhaps more particularly the -- perhaps
13 there were existing committees, pool maintenance and
14 long-range planning and budget committees. In any
15 event, the motion speaks for itself.

16 It is important to note that the motion said
17 nothing about the possibility of decommissioning the
18 pool and understandably so for the reasons I'll get to
19 in a few minutes.

20 The evidence indicates that the Board of
21 Directors of the beach club honored neither the letter
22 nor the spirit of that motion of October 27, 2012.
23 Instead, the Board prepared a ballot to be sent to the
24 membership that gave the membership two choices and two
25 choices only. Either refurbish, remodel, and update the

1 pool at a cost of approximately \$650,000 or remove the
2 pool at a cost of approximately \$200,000. No further
3 information was provided.

4 It seems obvious that no one could possibly
5 make an informed decision on this ballot without knowing
6 how the Board arrived at these figures, nor was there
7 any information provided about various financing
8 arrangements or any other information that would be
9 necessary to give the membership an idea of the
10 underpinnings of what they were voting on.

11 The ballot was plainly inconsistent with the
12 October 27, 2012, motion. The vote was 166 to 153 to
13 remove the pool. The Board then apparently approved the
14 special assessment to raise the funds to remove the
15 pool. The assessments were due to be paid on
16 September 13, 2013, two days after the TRO was issued in
17 this case.

18 So what to make of the request for a
19 temporary injunction to restrain the demolition and
20 decommissioning of the pool. The parties have agreed,
21 as I mentioned before, to extend these restraints or
22 this restraint, and it is so ordered.

23 I will note in passing that the plaintiffs
24 presented a very strong case for the entry of the
25 temporary injunction had that been contested. The first

1 thing to note in this connection is that it is
2 elementary that the Board must act in accordance with
3 the governing documents of the association, that is, the
4 Articles of Incorporation, the Bylaws, the restrictive
5 covenants, and the like. If they fail to do so, they
6 act ultra vires, that is, beyond the scope of their
7 power allowed or granted by the governing documents of
8 the association. The plaintiffs have the right to
9 assert this lack of capacity to act pursuant to the
10 Washington Nonprofit Corporation Act and specifically
11 RCW 24.03.040(1).

12 So looking at the Bylaws themselves, they
13 provide a number of things in this connection. First of
14 all, the object of the Club in Article II is to provide
15 and operate recreational facilities for the benefit of
16 the members and to procure, maintain, operate and
17 protect the recreational and associated safety concerns
18 of the members of the community of Admiral's Cove,
19 subject to the approval of the members of the Club.

20 Club privileges are provided for in
21 Article III, Section 6 of the Bylaws and those
22 privileges are available to all active and associate
23 members in good standing. That provision in Section 6
24 goes on to say that, provided that all guests shall be
25 required to pay a daily fee, as determined by the Board

1 of Directors, for the use of the swimming pool. So the
2 Bylaws clearly contemplate the existence of the swimming
3 pool.

4 The basic powers of the beach club are set
5 forth in Article VIII, Section 1 of the Bylaws. That
6 provision says that all powers of the Club shall be
7 exercised by and under the authority of the -- under the
8 authority of, and the business and affairs of the Club
9 shall be controlled by the Board of Directors.
10 Section 2, that maintenance and operations of the Club
11 facilities shall be provided for, in essence, and that
12 provision says that, quote, "To cause the properties and
13 facilities owned by the Club to be maintained and
14 operated" -- underscore maintained and operated -- "in
15 accordance with appropriate County, State, and Federal
16 laws and regulations, the Articles of Incorporation and
17 these Bylaws." Again, making reference to the
18 properties and facilities of the beach club.

19 Section 4 of Article VIII says that, quote,
20 "To adopt rules and regulations for use, operation, and
21 care of Club facilities, not inconsistent with law, the
22 Articles of Incorporation or these Bylaws as they may
23 deem best." And these are among the express powers and
24 duties of the Board of Directors.

25 Interestingly enough, the duties of the

1 secretary of the beach club, as indicated in Section 3
2 of Article X of the Bylaws, provides, among other
3 things, that the secretary shall pick up swim fees
4 collected at the pool, record them in his or her
5 records, and promptly turn them over to the treasurer.
6 So this provision again presupposes the existence of the
7 pool.

8 Section 4 of that Article provides that "the
9 treasurer shall maintain an up-to-date card file of
10 paid-up members for use at the Club swimming pool,"
11 again presupposing the existence of the pool.

12 And, finally, in Article XII of the Bylaws
13 there is specific provision in Section 2 for a Pool
14 Operation and Safety Committee, in Section 3 for a Pool
15 Maintenance and Improvement Committee, and in Section 4
16 with regard to the Grounds and Building Committee,
17 there's specific reference to the swimming pool complex.

18 So it seems obvious that the Bylaws of the
19 association clearly presupposed the existence of the
20 pool, and any action taken that would decommission the
21 pool would be contrary to the Bylaws.

22 It's also important to note that the deeds
23 of beach club members contain specific language granting
24 them memberships in the beach club and further provides
25 that the beach club, quote, "will own and maintain

1 certain beach rights, recreational areas, swimming pool"
2 -- underscore the words swimming pool -- "and other
3 tracts." Unquote. So the property owners have a
4 property right in this connection.

5 It also seems obvious that the plaintiffs in
6 this case, as members of the association, have a clear
7 legal right to the continued operation and maintenance
8 of the pool, a well-grounded fear of the immediate
9 invasion of that right based on the Board's decision to
10 follow the unauthorized vote to decommission the pool
11 and impose a special assessment to do so, and they would
12 be actually and substantially injured if the Board was
13 allowed to proceed with these actions. Clearly, they
14 have no adequate remedy at law in this connection
15 either. So, again, by agreement, the restraint against
16 the decommissioning of the pool is granted.

17 For these same reasons that I've just noted
18 here, the Court temporarily enjoins the Board from
19 levying any special assessment for the purpose of paying
20 for the decommissioning of the pool. Just as it is
21 elementary that the Board cannot act contrary to its
22 Bylaws, so it is also elementary that it cannot act
23 contrary to a motion passed by the membership of the
24 association in accordance with the Bylaws.

25 The October 27, 2012, motion was such a

1 motion. The Court, therefore, temporarily enjoins the
2 Board from taking any action contrary to the October 27,
3 2012, motion unless and until that motion is repealed or
4 amended in a manner consistent with the Bylaws and in a
5 manner consistent with this Court's order.

6 The remaining issues are somewhat more
7 complex. The plaintiffs have brought a motion for
8 contempt, contending the Board violated the TRO by
9 attempting to enforce the special assessment for the
10 decommissioning of the pool and by failing to hold the
11 annual meeting of the membership provided for in
12 Article IV, Section 1 of the Bylaws.

13 Plaintiffs contend that this violated the
14 provision of the TRO that prohibited the defendant from
15 denying or refusing to accept a nomination for director
16 of the Board of Directors of any member who is in good
17 standing or preventing a member in good standing from
18 running for election to the Board in a membership
19 meeting held for that purpose. Plaintiffs note the,
20 quote, "directly or indirectly," unquote, language of
21 the TRO in this regard.

22 On the other hand, the defendants contend
23 that the TRO only prohibited them from imposing or
24 levying the special assessment for the purpose of
25 decommissioning the pool and that they had already done

1 this by the time that the TRO was entered.

2 They further contend that since the
3 assessment had already been imposed and therefore did
4 not violate the TRO, that failure to pay the assessment
5 by the plaintiffs would mean that they were not in good
6 standing under Article III, Section 4 of the Bylaws and,
7 therefore, could not vote at membership meetings
8 pursuant to Article V, Section 1 of the Bylaws or run
9 for director.

10 Now, contempt is defined in the law as the
11 intentional disobedience of a court order. Because of
12 the lack of clarity of the specific terms of the TRO, I
13 cannot find that the defendants intentionally disobeyed
14 the TRO by attempting to enforce the special assessment
15 in some manner and by canceling the annual membership
16 meeting. I, therefore, deny the motion for a finding of
17 contempt and for any reasonable attorney fees that would
18 be imposed based on such a finding. But necessarily
19 implied in the motion for contempt is a request for
20 rulings on these issues, and, therefore, I will address
21 these issues.

22 First of all, I rule that the special
23 assessment was invalid for two reasons: First, it was
24 contrary to the October 27, 2012 motion. Secondly, the
25 Board has no authority under the Bylaws to decommission

1 the pool, and, therefore, it did not have any authority
2 to impose the special assessment for that purpose. I
3 will temporarily enjoin the defendants from taking or
4 attempting to take any action that is contrary to or
5 inconsistent with the express terms of the October 27,
6 2012, motion unless that motion is repealed or modified
7 by action properly taken in accordance with the Bylaws
8 and not inconsistent with this order I'm now
9 pronouncing.

10 The point here is that I cannot prohibit the
11 Board from taking actions in accordance with the Bylaws
12 as long as these are proper under the Bylaws and as long
13 as these actions are not otherwise prohibited by this
14 temporary injunction.

15 I further temporarily enjoin the enforcement
16 or collection of the special assessment levied or
17 imposed by the Board on August 13, 2013. It was an
18 invalid assessment. Since the special assessment was
19 invalid, it necessarily follows that the members are not
20 required to pay it. It necessarily follows from that
21 that members who have not paid the special assessment
22 remain members in good standing and are, therefore,
23 entitled to vote at membership meetings and are eligible
24 to serve as directors if they are otherwise in good
25 standing.

1 I recognize that heretofore there might have
2 been an issue about that, but, as I said before, the
3 motion for contempt places this issue squarely before
4 the Court and so I'm making this ruling.

5 I temporarily enjoin the defendants from
6 taking any action that would characterize or attempt to
7 characterize any person who has not paid the August 13,
8 2013, special assessment as a member not in good
9 standing under the Bylaws.

10 As far as plaintiffs' motion to require the
11 Board to hold the annual meeting is concerned, the
12 motion is granted. There is nothing in the TRO that
13 restrained the Board from holding the annual meeting
14 and, therefore, the Board should have held the meeting
15 under Article IV, Section 1 of the Bylaws. I order the
16 defendants to hold the annual meeting as soon as
17 possible. The comments about the timing for December
18 are noted. It doesn't seem possible under the time
19 requirements of the Bylaws to do that, and even if it
20 were possible to give the necessary notices to members
21 of the meeting, it is certainly appropriate, as counsel
22 has indicated, that the meeting not be held prior to the
23 first of January. So I will order that the meeting be
24 held as soon as possible under the terms of the Bylaws
25 which require certain notices to be given sometime after

1 the first of the year.

2 Only a nominal bond would be appropriate in
3 this matter so I condition this temporary injunction on
4 the posting of the bond at \$100.

5 That would conclude my ruling, and it's
6 going to take you a while, I would suggest, to write
7 this up in a manner consistent with my oral
8 pronouncement, so I would ask that counsel work with the
9 Court's oral pronouncement to prepare the necessary
10 orders or order, and present those in due course. If
11 there's some time crunch on this to get it done, I'll be
12 available by telephone, if necessary, to entertain any
13 questions about the form of the order next week. So I
14 appreciate that. That will conclude our hearing today,
15 ladies and gentlemen. Thank you very much.

16 MR. SKINNER: Thank you, Your Honor.

17 (Whereupon, the proceedings in this matter
18 were concluded for the day.)
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C E R T I F I C A T E

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I, JEANNE M. WELLS, do hereby certify that the foregoing verbatim report of the Court's oral ruling was taken by me and completed on Wednesday, November 27, 2013, and thereafter, transcribed by me by means of computer-aided transcription;

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

That I am herewith retaining the original and emailing copies to Criston C. Skinner, Vasudev N. Addanki, David R. Greenberg, and Marilee C. Erickson.

Jeanne M. Wells, RPR
CCR #: 2298

December 3, 2013