

SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF ISLAND

ROBERT WILBUR,

Plaintiffs,

vs.

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

Defendant.

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

DECLARATION OF CHRISTOPHER J.
NYE IN SUPPORT OF DEFENDANT
ADMIRAL'S COVE BEACH CLUB'S
MOTION FOR SUMMARY
JUDGMENT RE: VALIDITY OF 2013
BALLOT TO DECOMMISSION POOL

I, Christopher J. Nye, declare and state as follows:

1. I am counsel of record for Defendant Admiral's Cove Beach Club ("ACBC").

I am over the age of 18 and competent to testify to the matters herein.

2. Attached hereto as Exhibit "A" is a true and correct copy of the June 6, 2016 ruling on Intervenor/Appellant's RAP 8.3 Motion to Stay from Commissioner Mary Neel of the Washington Court of Appeals, Div. 1.

DECLARATION OF CHRISTOPHER J. NYE – 1


1 3. To date, Intervenor has never posted a supersedeas cash or bond in the Superior
2 Court registry in response to this ruling.

3 4. Attached hereto as Exhibit "B" is a true and correct copy of Division 1 of the
4 Washington Court of Appeals' opinion in this case dated August 1, 2016.

5 5. Attached hereto as Exhibit "C" is a true and correct copy of excerpts of the
6 transcript of this Court's oral ruling on Plaintiff's Motion for Summary Judgment dated March
7 27, 2015.

8
9 **I declare, under penalty of perjury under the laws of the State of Washington, that**
10 **the foregoing is true and correct.**

11
12 DATED this 30 day of June, 2017, at Seattle, Washington.

13
14
15 
16 _____
17 Christopher J. Nye, WSBA No. 29690

NYE EXHIBIT A

The Court of Appeals
of the
State of Washington

RICHARD D. JOHNSON,
Court Administrator/Clerk

DIVISION I
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June 6, 2016

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CASE #: 73725-2-1

Susan Corliss, Appellant v. Admiral's Cove Beach Club et al, Respondents

Counsel:

The following notation ruling by Commissioner Mary Neel of the Court was entered on June 3, 2016:

Appellant Susan Corliss has filed a motion for a stay/injunction under RAP 8.3 to prevent respondent Admiral Cove Beach Club from taking steps to implement a recent, second vote regarding disposition of an existing community swimming pool.

Admiral Cove Beach Club has an old swimming pool that has become dilapidated. In 2013 the 600 community members were given a choice between repairing/refurbishing the pool at a cost of \$650,000, or decommissioning/removing the pool at a cost of \$200,000. A majority of voters chose to decommission the pool (166/153). Club member Robert Wilbur then filed a lawsuit against the Club and sought a permanent injunction to invalidate the vote. The trial court ruled that the vote was invalid as outside the governing articles of incorporation and bylaws, which the court ruled do not permit the Board to dispose of the pool and related facilities, and that the Board has a duty to maintain, operate and repair the pool. The trial court denied the request to maintain jurisdiction, noting that the order does not limit any party from seeking further and additional relief based on facts/issues not presented or that have arisen since the order. In short, the decision does nothing other than invalidate the vote to decommission the pool.

Intervenor/club member Susan Corliss filed a notice of appeal challenging the trial court order. At the time, no one sought a stay of the trial court order. Briefing on the appeal is complete.

In the meantime, in March 2016 a reconstituted Board conducted a second vote regarding the disposition of the pool, to wit: an assessment of \$500/\$1000 per lot to refurbish the pool; and an additional assessment for a heat pump option. Members could vote yes or no on both propositions. A majority of voters favored the first assessment (144/125); the second, additional assessment failed. The Board is now in the process of collecting the assessments and making plans to begin work on the pool.

Appellant Corliss now seeks a stay to prevent the Board from collecting the assessment, which she says will cause a financial hardship for some members, and from beginning work on refurbishing the pool, which may moot the appeal. The Club and Wilbur oppose a stay.

If appellant Corliss prevails on appeal and this court reverses the trial court order invalidating the vote to decommission the pool, the initial vote to decommission the pool would be upheld. It appears that any issues regarding the effect of the second vote to refurbish the pool would be resolved on remand. To the extent that Corliss suggests that the second vote was invalid due to disenfranchisement of some members and/or other improper voting procedures, the issues are not part of the current appeal, and at this point apparently no lawsuit or other action has been brought to invalidate the second vote.

The Board has taken steps to minimize the potential financial hardship for members by allowing six months to pay the assessment without finance charges and has agreed to make additional arrangements on an individual basis. At this point Corliss has not demonstrated a legal basis to stop the Board from beginning to collect the assessment. But if the Board begins to spend some of the money it has collected and begin work on refurbishing the pool, Corliss could be deprived at least in part of the benefit of a successful appeal. A stay is warranted to preserve the benefit of a successful appeal. The Board has provided evidence that delay until September 2016 may result in a 5% cost increase, and that delay for a second year may cost an additional 5-7%, plus additional consulting fees of \$5,000 - \$7,000. The briefing is complete, and the appeal is ready to be set before a panel. A supersedeas cash or bond of \$30,000 (5% of the total project cost of \$600,000) is appropriate.

Accordingly, upon appellant posting a supersedeas cash or bond of \$30,000 in the superior court registry, a partial stay is granted to permit the Board to collect the assessment, which shall be placed in a separate fund not to be spent until the appeal in this court is completed.

Therefore, it is

Page 3 of 3
June 6, 2016
CASE #: 73725-2-I

ORDERED that upon appellant posting a supersedeas cash or bond of \$30,000 in the superior court registry, a partial stay is granted to permit the Board to begin collecting the assessment, which shall be placed in a separate fund not to be spent until the appeal in this court is complete.

Sincerely,

A handwritten signature in black ink, appearing to read 'R.D. Johnson', with a long horizontal flourish extending to the right.

Richard D. Johnson
Court Administrator/Clerk

lls

NYE EXHIBIT B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ROBERT WILBUR and DUSTIN)
FREDERICK,)

No. 73725-2-1

Plaintiffs,)

DIVISION ONE

v.)

UNPUBLISHED OPINION

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,)

FILED: August 1, 2016

Defendants,)

SUE CORLISS,)

Appellant,)

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

Respondents.)
_____)

LEACH, J. — In this dispute regarding interpretation of a nonprofit corporation's governing documents, intervenor Susan Corliss appeals from an order granting partial summary judgment and a declaratory judgment in favor of Robert Wilbur. Because Wilbur failed to establish that he was entitled to such a judgment as a matter of law, we reverse and remand for further proceedings.

FACTS

The Plat of Admiral's Cove, Divisions 1 through 7, is located on Whidbey Island. Owners of lots within the plat are eligible for membership in the Admiral's Cove Beach Club (Club), a nonprofit corporation. Incorporated in 1969, the Club governs the development. Club members enjoy the use of Club-owned recreational facilities, including an outdoor Olympic-sized pool with views of Puget Sound and the Olympic Mountains. The Club owns other recreational assets: a large waterfront beach area, fire pit and picnic area, volleyball and basketball courts, and a playground.

A Board of Directors (Board), elected by the members at the Club's annual membership meeting, manages the Club's day-to-day operations. The Board levies annual dues and is authorized to propose "special assessments" for unexpected costs or maintenance "at any time." A simple majority vote is required to impose special assessments on Club members. Club members vote by mail-in ballot.

Article V of the Club's articles of incorporation state its "purposes, objects and powers." Pertinent to this lawsuit, these include the power:

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

....
4. To purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property

5. To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of the property and assets.

The articles of incorporation make no specific reference to a pool, but the Club's bylaws do. The Club's bylaws list two objectives: to "[p]rovide and operate recreational facilities for the benefit of the members" and to "procure, maintain, operate, and protect the recreational (and associated safety) concerns of the members of the community." The bylaws also establish six standing committees. Two are devoted to the pool. The Pool Operations and Safety Committee "set[s] policies for operation of the club swimming pool, and establish[es] and enforce[s] safety rules and procedures." The Pool Maintenance and Improvement Committee is responsible for "maintenance of the Club Swimming Pool and the operating machinery, the buildings housing the pool equipment, rest rooms, office and fence enclosing the pool complex, pool supplies, heating, lighting, etc." and "shall obtain estimates as necessary for accomplishing such maintenance."

Over time, the pool fell into a state of disrepair. By 2012, it was largely unusable. At the Club's October 2012 annual meeting, the members unanimously passed the following motion:

By November 10, 2012, Pool Planning by members of the Pool Maintenance, Long Range Planning and Budget Committees will work with a nonresident facilitator, as an ex-officio team member and may consult with legal counsel as warranted

Under the overall objective of having the pool open as soon as a funding and construction schedule allow, the committees shall have three (3) tasks to complete by February 28, 2013, or sooner:

(1) To identify and evaluate various options related to the pool's future, including but not limited to needed equipment, a permanent pool cover, and repairs to the pool and its building, foundation, plumbing, and electrical system, and to recommend the best cost and timing options. A basic and simple plan to identify projects for contractor bidding shall be developed to guide these efforts; the plan shall also recommend an implementation schedule for ADA [Americans with Disability Act] compliance from both a financial and legal standpoint.

(2) Investigate and develop payment options related to assessment costs and dues under task one and to select the approach that produces the best balance between recreational benefits and costs to members. The assessment total will be offset by the amount of donations accumulated for that purpose.

(3) Upon completion of tasks 1 and 2, the committees shall submit the findings to the Board and subsequently work with Board as appropriate.

Over the next several months, committee members held meetings and gathered cost estimates. A consultant's inspection revealed widespread problems with the pool and pool buildings, and the consultant recommended significant renovations at a cost of approximately \$650,000. The committee presented this information to the Board.

In May 2013, the Board sent a ballot to all Club members for a vote about the pool's future. The ballot presented two choices: (1) "refurbish, remodel and update the pool," requiring a special assessment of approximately \$650,000, or (2) "remove the pool," requiring a special assessment of approximately \$200,000. The Board included a two-page "Frequently Asked Questions" document explaining various options and

issues related to the vote. In a relatively close vote, a majority of Club members voted to remove the pool instead of refurbish it.

In September 2013, Robert Wilbur, a “pro-pool” Club member, filed a lawsuit against the Club seeking a declaration that (1) the May 2013 vote was invalid because it was inconsistent with the October 2012 motion and (2) the Club’s articles of incorporation and bylaws did not permit the Board to remove or decommission the pool. Wilbur also sought an injunction restraining the Club from taking any action to remove the pool.

Wilbur moved for summary judgment. The Club took “no position” on the motion and asked the trial court to issue a declaratory ruling clarifying its legal responsibilities regarding the pool.¹ Corliss, an “anti-pool” Club member, intervened and filed a cross motion for dismissal of Wilbur’s complaint.

The trial court granted partial summary judgment in favor of Wilbur and issued the following declaratory judgment:

1. The Admiral’s Cove Beach Club (“ACBC”) swimming pool and related facilities are among the athletic and recreational facilities contemplated under Article V of the Articles of Incorporation of ACBC which provides that the purpose of ACBC is “[t]o construct, install, maintain and/or own and operate athletic and recreational facilities of all types and kinds for the benefits of the members.”

¹ After Wilbur filed his complaint but prior to the summary judgment hearing, Club members held their annual elections and replaced several “anti-pool” directors with “pro-pool” candidates.

2. ACBC and its Board of Directors must adhere to the requirements and directives set forth in the motion that was made and approved at the Defendant's annual membership meeting on October 27, 2012, unless said motion is properly repealed or amended to remove the duties of the Board of Directors and ACBC, which duties are presently embodied in this motion. That particular motion, as approved, does not contain language that could be construed to permit the demolition or decommissioning of the swimming pool or related facilities as an option for the membership's future consideration.
3. The prior Board's action to present a ballot to the membership with the option to decommission the pool was contrary to the October 27, 2012, motion. It was therefore invalid and of no force and effect.
-
6. In consideration of the applicable provisions of the Articles of Incorporation and Bylaws, the context in which they were promulgated, the circumstances surrounding their promulgation, and the other rules for their interpretation, the general power to dispose of property as set forth in the Articles of Incorporation and Bylaws governing ACBC, does not provide 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 Admiral's Cove Beach Club, 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.

The trial court denied Wilbur's request for injunctive relief. Corliss appeals.²

ANALYSIS

I. Necessary Parties

As a preliminary matter, we address Corliss's claim that the trial court lacked the authority to enter a declaratory judgment because Wilbur failed to join all Club members as necessary parties. Corliss relies on RCW 7.24.110. This statute requires that "[w]hen declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding." A "necessary party" for a

² In her assignments of error, Corliss challenges the grant of partial summary judgment in favor of Wilbur and the denial of her motion for summary judgment dismissal. However, the trial court did not deny Corliss's motion. Corliss failed to renege her motion following a request for a continuance, and it was not properly before the trial court at the time of the hearing. Instead, the trial court declined to rule on Corliss's cross motion as moot.

declaratory judgment action is one “whose ability to protect its interest in the subject matter of the litigation would be impeded by a judgment.”³

We disagree with Corliss. There are only two positions in this case: that the Club has the authority to remove the pool or that it does not. Both positions are adequately represented by the parties to the case. The joinder of additional Club members as parties was not necessary to resolve this controversy.

II. Summary Judgment

We review the grant of summary judgment de novo.⁴ Summary judgment is appropriate only if the moving party is entitled to judgment as a matter of law.⁵ We interpret the governing documents of a corporation in accordance with accepted rules of contract interpretation.⁶ We give the words in a contract their plain, ordinary meaning unless the contract as a whole clearly demonstrates a contrary intent.⁷ Articles of incorporation and bylaws are “correlated documents” that are construed together.⁸ “[S]ummary judgment is proper if the parties’ written contract, viewed in light of the parties’ other objective manifestations, has only one reasonable meaning.”⁹

³ Primark, Inc. v. Burien Gardens Assocs., 63 Wn. App. 900, 907, 823 P.2d 1116 (1992).

⁴ Keck v. Collins, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015).

⁵ CR 56(c).

⁶ Roats v. Blakely Island Maint. Comm’n, Inc., 169 Wn. App. 263, 273-74, 279 P.3d 943 (2012).

⁷ 4105 1st Ave. S. Invs., LLC v. Green Depot WA Pac. Coast, LLC, 179 Wn. App. 777, 784, 321 P.3d 254, review denied, 181 Wn.2d 1004 (2014).

⁸ Roats, 169 Wn. App. at 274 (quoting Rodruck v. Sand Point Maint. Comm’n, 48 Wn.2d 565, 577, 295 P.2d 714 (1956)).

⁹ Go2Net, Inc. v. C I Host, Inc., 115 Wn. App. 73, 85, 60 P.3d 1245 (2003) (quoting Hall v. Custom Craft Fixtures, Inc., 87 Wn. App. 1, 9, 937 P.2d 1143 (1997)).

First, we consider if the Board had the authority to present Club members with the option of voting to remove the pool. We conclude that it did.

The October 2012 motion required the establishment of a committee to identify needed repairs, investigate costs, and submit this information to the Board. Wilbur does not dispute that the committee performed its assigned task. Instead, Wilbur contends the Board ignored the committee's findings and presented the Club's members with the option to remove the pool, a choice not contemplated by the motion. He argues that this option is inconsistent with the motion's stated objective of "having the pool open as soon as a funding and construction schedule allow." But the October 2012 motion governed only the actions of the committee. It did not impose any duties or constraints on the Board. And the Club's bylaws permit the Board to present special assessments to the members for a vote "at any time," regardless of whether they have been approved by motion. As a matter of law, Wilbur fails to establish the invalidity of the May 2013 vote.

Corliss also asserts that the Club has the authority, pursuant to its governing documents, to remove the pool at any time. We agree.

The articles of incorporation expressly give the Club the power to "sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of the property and assets."¹⁰ "Dispose of" is defined as "to transfer into new hands or to

¹⁰ This language is identical to that found in RCW 24.03.035(5), which provides that any nonprofit corporation has the power to "sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets."

the control of someone else (as by selling or bargaining away) . . . to get rid of: throw away: discard . . . to treat or handle (something) with the result of finishing or finishing with.”¹¹ Thus, a plain reading of the Club’s governing documents demonstrates the Club has the broad authority to remove or decommission any of its “property and assets.”

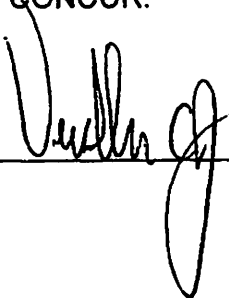
Wilbur argues that the words “property” and “assets” are general terms that do not include the pool. Instead, Wilbur contends, the pool is an “athletic and recreational facility” which the articles of incorporation require to be “maintained and operated.” We find this interpretation strained. First, the articles of incorporation state that the Club may dispose of “all or any part” of the property. This phrase states that anything the Club owns is subject to disposal. The articles of incorporation do not mention the pool by name or specifically exempt the pool from disposal. Second, the use of the phrase “property and assets” elsewhere in the bylaws shows an intent that these words include the pool. For example, article III, section 7 of the bylaws, which provides that Club membership is appurtenant to ownership of property in Admiral’s Cove, states that “no member whose membership is transferred [through sale or devise of the property] shall be entitled to share or participate in any of the property or assets of the Club.” (Emphasis added.) This clearly indicates that if a Club member ceases to belong to the Club, he or she loses the benefits of Club membership, including use of the swimming pool.

¹¹ WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 654 (2002).

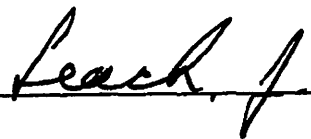
Wilbur argues that because the bylaws establish two committees devoted to pool-related issues, this shows a strong intent to maintain and operate the pool. But the existence of these committees does not guarantee or compel the perpetual presence of a pool.¹² For example, the bylaws also establish a Grounds and Building Committee, which is responsible for maintenance of and improvements to the Club's grounds, including "playfields, playground equipment, the shelter and stoves, picnic tables, flower beds, etc." But this does not mean that the Club lacks the authority to get rid of a broken swing set or a dilapidated picnic shelter.

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. Accordingly, we reverse and remand for further proceedings consistent with this opinion.

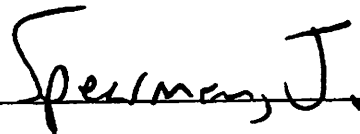
WE CONCUR:



A handwritten signature in black ink, appearing to be "V. J. ...", written over a horizontal line.



A handwritten signature in black ink, "Leach, J.", written over a horizontal line.



A handwritten signature in black ink, "Spelman, J.", written over a horizontal line.

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COURT OF APPEALS
STATE OF WASHINGTON

¹² We note that while Wilbur argued below that he possessed a property interest in the pool, he expressly abandons this claim on appeal.

NYE EXHIBIT C

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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.) Cause No: 13-2-00741-4
 ADMIRAL'S COVE BEACH CLUB, a) Court of Appeals
 Washington non-profit) No: 73725-2-I
 Corporation; and JEAN SALLS,)
 MARIA CHAMBERLAIN, KAREN) Pages 76-113
 SHAAK, ROBERT PEETZ, ELSA)
 PALMER, ED DELAHANTY AND DAN)
 JONES, individuals,)
 Defendants.)

SUE CORLISS,)
 Intervenor,)
 vs.)
 DUSTIN FREDERICK, ROBERT)
 WILBUR, ADMIRAL'S COVE BEACH)
 CLUB, a Washington non-profit)
 corporation, and its BOARD OF)
 DIRECTORS,)
 Defendants.)

Verbatim Report of Court's Oral Ruling

BE IT REMEMBERED, that on Friday, March 27,
 2015, the above-named and numbered cause came on
 regularly for hearing before the HONORABLE ALAN R.

1 HANCOCK, sitting as judge in the above-entitled court,
2 at the Island County Courthouse, in the town of
3 Coupeville, state of Washington.

4 The plaintiffs appeared through their
5 attorney, Criston C. Skinner;

6 The defendant Admiral's Cove Beach Club
7 appeared through its attorney, Christopher J. Nye;

8 The intervenor appeared through her
9 attorney, Jay Carlson.

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

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1 THE COURT: I'm prepared to issue my
2 decision in this case at this time. Plaintiff Robert
3 Wilbur and intervenor Susan Corliss have both brought
4 motions for summary judgment on their respective claims.
5 Technically, only Mr. Wilbur's motion is scheduled for
6 hearing today.

7 Mr. Wilbur requests a permanent injunction
8 enjoining and restraining the Admiral's Cove Beach Club
9 and its Board of Directors from taking any action to
10 demolish and decommission the Beach Club's swimming pool
11 complex and its related facilities for as long as the
12 stated purposes and object of the Beach Club's Articles
13 of Incorporation remain in effect.

14 He also seeks to enjoin the Beach Club and
15 its Board of Directors from imposing or collecting any
16 assessment for the purpose of demolishing and
17 decommissioning the pool and related facilities and to
18 require the defendants to properly operate and maintain
19 the pool and facilities in accordance with the law and
20 the Bylaws of the Beach Club, including approving and
21 implementing an annual budget that provides sufficient
22 funds for dues and assessments to maintain the pool and
23 related facilities.

24 He also seeks to enjoin the Beach Club and
25 its Board from taking any action contrary to the motion

1 proceeding by a member of a nonprofit corporation
2 against the corporation to enjoin the doing or
3 continuation of unauthorized acts, the lack of capacity
4 or power of the corporation to do such acts may be
5 asserted. Mr. Wilbur is clearly making such claims in
6 the present case and he has the statutory as well as the
7 contractual right to do so. I find it unnecessary to
8 reach the issue of whether Mr. Wilbur also has some form
9 of property right to do so under the facts of this case.

10 The Court now turns to the substantive
11 issues presented. First, there is the issue of whether
12 the Board of Directors of the Beach Club violated the
13 terms of the October 27, 2012, motion by sending out the
14 ballots to the members which gave them the choice of
15 either repairing and refurbishing the pool at an
16 approximate cost of \$650,000 or demolishing and
17 decommissioning the pool at an approximate cause of
18 \$200,000.

19 In this regard, I first note that it is
20 axiomatic that the Board must adhere to motions that are
21 duly passed by the membership. I don't think anyone
22 seriously contends that if the membership passes a
23 motion that is consistent with the governing documents
24 and within the power of the Board to execute that the
25 Board can simply disregard and ignore the motion.

1 Rather, the dispute here appears to be whether the
2 Board's action was or was not consistent with the
3 motion.

4 One or more declarations submitted in
5 support of Mr. Wilbur's motion seem to suggest that the
6 minutes of the October 27, 2012, annual meeting did not
7 accurately reflect the action that was actually taken at
8 the meeting. However, the Court will assume that the
9 motion that was passed was in fact accurately reflected
10 in the minutes, the document which officially sets forth
11 the action taken.

12 The motion reads as follows, quote, "By
13 November 10, 2012, pool planning by members of the Pool
14 Maintenance, Long Range Planning and Budget Committees
15 will work with a nonresident facilitator and an
16 *ex officio* team member and may consult with legal
17 counsel as warranted. All legal counsel expenses and
18 other costs will require prior approval from the Board
19 of Directors. Under the overall objective of having the
20 pool open as soon as a funding and construction schedule
21 allow, the committees shall have three tasks to complete
22 by February 28, 2013, or sooner: '(1) To identify and
23 evaluate various options related to the pool's future,
24 including but not limited to needed equipment, a
25 permanent pool cover, and repairs to the pool and its