

*Agreed by all lawyers  
Signed by Judge Hancock*

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4 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**  
5  
6 **IN AND FOR THE COUNTY OF ISLAND**

7  
8 ROBERT WILBUR and DUSTIN  
9 FREDERICK,

Plaintiffs,

10 vs.

11 ADMIRAL'S COVE BEACH CLUB, a  
12 Washington non-profit corporation;  
13 and JEAN SALLS, MARIA  
14 CHAMBERLAIN, KAREN SHAAK,  
15 ROBERT PEETZ, ELSA PALMER,  
16 ED DELAHANTY AND DAN JONES,  
17 individuals,

18 Defendants.

NO. 13-2-00741-4

FINDINGS OF FACT,  
CONCLUSIONS OF LAW &  
ORDER:

1. GRANTING TEMPORARY  
INJUNCTION &
2. DENYING MOTION FOR  
CONTEMPT

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20 **THIS MATTER** came before the Court upon the motion of the plaintiffs; the  
21 plaintiffs appearing through counsel, Christon C. Skinner; and the defendants, Elsa  
22 Palmer and Ed Delahanty appearing through their attorney, Marilee C. Erickson; and  
23 the defendants Admiral's Cove Beach Club, Jean Salls, Maria Chamberlain, Karen  
24 Shaak, Robert Peetz and Dan Jones appearing through their attorney, Vasu Addanki;  
25 and the court having considered the plaintiffs' original motion for entry of temporary  
26 restraining order and order to show cause and supporting documents, including  
27 declarations from Robert Wilbur, Dustin Frederick and Gwyn Staton; the response  
28 submitted by the defendants, including the declaration of Karen Shaak; and the reply  
29 declarations submitted by Dustin Frederick and Robert Wilbur, and Dustin Frederick  
30 on behalf of plaintiff; and Court having determined that the plaintiffs <sup>have established</sup> are entitled to  
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ORDER GRANTING TEMPORARY INJUNCTION  
& OTHER RELIEF

Page 1

*\*a likelihood of prevailing  
on the merits for some or*

**ORIGINAL**

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1 ~~some~~ of all of the relief requested in their complaint; and further that ongoing,  
2 irreparable injury and financial loss may occur to the plaintiffs if this order is not  
3 entered; and that no other plain, adequate or speedy remedy at law is available to the  
4 plaintiffs; and, based on the evidence presented at the hearing, the Court makes the  
5 following Findings of Fact *and conclusions of law which are based*  
6 *on the current record for purposes of the court's decision on plaintiffs' \**  
7 I. FINDINGS OF FACT

8 1. Admiral's Cove Beach Club ("ACBC") was formed on June 2, 1969. ACBC is  
9 an association that was formed for the principal purpose of providing and operating  
10 recreational facilities for the benefit of its members and to procure, maintain, operate  
11 and protect the recreational and associated safety concerns of the members of the  
12 community of Admiral's Cove, subject to the approval of the members of the Club. This  
13 purpose is found in Article II of the ACBC Bylaws.  
14

15 2. The Plat of Admiral's Cove, Divisions 1 through 7, is located in Island County,  
16 Washington.

17 3. The owners of parcels of property within this plat are entitled, by virtue of  
18 that ownership, to an "Active" membership in the non-profit corporation known as  
19 Admiral's Cove Beach Club.  
20

21 4. The original grant of deed for each parcel of property within the Admiral's  
22 Cove Plat conveyed both the real estate and,  
23 "one family membership in Admiral's Cove Beach Club, Inc. (sic), a Washington  
24 nonprofit corporation, which will own and maintain certain beach rights,  
25 recreational areas, swimming pool and other tracts, as shown on plat of  
26 Admirals Cove... .

27 ~~5. ACBC is not a Homeowner's Association because it permits non-owners to~~  
28 ~~be members of the corporation pursuant to an "Associate Membership."~~

29 6. The primary recreational asset owned by ACBC is an Olympic sized  
30 swimming pool and locker room/lavatory located on property owned by ACBC.  
31

32 *\*Motions for a preliminary injunction and return for  
Contempt.*

1 7. ACBC is governed by a board of directors who are elected by and serve at  
2 the pleasure of the membership.

3 8. Defendants Salls, Chamberlain, Shaak, Peetz, Palmer, Delahanty and  
4 Jones are the current members of the board (the "Board").

5 9. The swimming pool and associated lavatory/locker facility is in need of  
6 maintenance, repair or renovation, the extent, timing and funding options of which  
7 have not yet been fully developed

8 10. At an annual meeting of the members of ACBC, a motion was made and  
9 unanimously approved by the membership that required the board of directors to meet  
10 and confer with the "Pool Operations and Maintenance" and "Long Range Planning"  
11 committees to investigate various funding alternatives for paying the costs of  
12 renovating and/or repairing the swimming pool. In addition, the members directed the  
13 board to work with these committee members to develop a ballot to be submitted to  
14 the members for the purpose of voting on a special membership assessment.  
15

16 11. On October 27, 2012, the membership of the beach club held its annual  
17 meeting. At that time, the membership passed a motion which is part of the record in  
18 this case. The motion provided that the committees of the beach club were to identify  
19 and evaluate various options relating to the pool's future, including but not limited to  
20 needed equipment, a permanent pool cover, and repairs to the pool and its building,  
21 foundation, plumbing, and electrical system and to recommend the best cost and  
22 timing options. The motion further stated that a basic and simple plan to identify  
23 projects for contractor bidding shall be developed to guide these efforts.  
24

25 12. The plan approved by the members also recommends an implementation  
26 schedule for ADA compliance from both a financial and legal standpoint.  
27

28 13. The motion that was approved also provided that the committees would  
29 investigate and develop payment options related to assessment costs and dues under  
30 task 1 and to select the approach that produces the best balance between recreational  
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1 benefits and costs to members. The assessment total was to be offset by the amount  
2 of donations accumulated for that purpose.

3 14. The approved motion also provided that, upon completion of tasks 1 and 2,  
4 the committees "shall submit the findings to the Board and subsequently work with the  
5 Board to develop an appropriate ballot." The approved motion also set forth the nature  
6 of these committees that would be formed for these purposes.

7  
8 15. The motion approved by the members at the 2012 annual meeting had no  
9 provision or contingency related to the "decommissioning" of the swimming pool.

10 16. The Board of Directors of the beach club honored neither the letter nor the  
11 spirit of that motion of October 27, 2012. Instead, the Board prepared a ballot to be  
12 sent to the membership that gave the membership two choices and two choices only:  
13 (1) either refurbish, remodel, and update the pool at a cost of approximately \$650,000  
14 or (2) remove the pool at a cost of approximately \$200,000. No further information was  
15 provided.

16  
17 17. In view of the manner that the board presented the members with ballot  
18 choices, no member of ACBC could possibly make an informed decision on this ballot  
19 without knowing how the Board arrived at these figures, nor was there any information  
20 provided about various financing arrangements or any other information that would be  
21 necessary to give the membership an idea of the underpinnings of what they were  
22 voting upon.

23  
24 18. The ballot was plainly inconsistent with the October 27, 2012, motion that  
25 was approved by the membership at its annual meeting.

26 19. The vote on the defective ballot was 166 to 153 in favor of the provision to  
27 remove the pool for the cost specified. The Board then approved a special assessment  
28 to raise the funds to remove the pool.

29 20. On September 11, 2013, this court entered an order restraining the board of  
30 directors from, among several things, taking any action to decommission or damage  
31 the swimming pool and from attempting to impose a levy or special assessment  
32

1 related to the removal or decommissioning of the pool. The restraining order was  
2 continued by agreement on several occasions.

3 20. Based on the timing of the Board's actions, the assessments for funds to  
4 remove the pool were due to be paid on September 13, 2013, two days after the  
5 temporary restraining order was issued in this case.

6 21. The parties have stipulated on the record that the court may extend the  
7 provisions of the temporary restraining order that enjoin the defendants from taking  
8 any action to decommission or otherwise damage or remove the pool as provided in  
9 paragraph 1 of the temporary restraining order entered in this case on September 11,  
10 2013.

11 22. The purpose and objective of the Admiral's Cove Beach Club in Article II of  
12 its bylaws is to provide and operate recreational facilities for the benefit of the  
13 members and to procure, maintain, operate and protect the recreational and  
14 associated safety concerns of the members of the community of Admiral's Cove,  
15 subject to the approval of the members of the Club.

16 23. The Bylaws of the association clearly presupposed the existence of the  
17 pool, and any action taken that would decommission the pool would be contrary to the  
18 Bylaws.

19 24. Any assessments or special assessments levied for the purpose of  
20 decommissioning the pool would be contrary to the Bylaws of ACBC and should be  
21 enjoined.

22 25. In addition to the express findings of fact set forth in paragraphs 1 – 24,  
23 above, the court incorporates by this reference, the transcript of the court's oral  
24 pronouncement which was placed on the record at the conclusion of the November 27,  
25 2013 hearing on Plaintiffs' motion. The transcript is identified as Exhibit A.  
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1 Based on the above findings, the Court makes the following Conclusions of  
2 Law:

## 3 II. CONCLUSIONS OF LAW

4 1. The plaintiffs, as members of the association, have a clear  
5 legal right to the continued operation and maintenance of the pool, a well-grounded  
6 fear of the immediate invasion of that right based on the Board's decision to  
7 follow the unauthorized vote to decommission the pool and impose a special  
8 assessment to do so, and they would be actually and substantially injured if the Board  
9 was allowed to proceed with these actions.

10  
11 2. The Plaintiffs have no adequate remedy at law in this connection  
12 either.

13 3. Unless the Defendants are enjoined from taking the action precluded by the  
14 terms of the temporary restraining order, the Plaintiffs' right to relief will be  
15 substantially invaded or prejudiced.

16 4. The special assessment imposed by the defendant board of directors on or  
17 about August 13, 2013, was invalid for two reasons: First, it was contrary to the  
18 October 27, 2012 motion. Secondly, the Board has no authority under the Bylaws to  
19 decommission the pool, and, therefore, it did not have any authority to impose the  
20 special assessment for that purpose.

21  
22 5. Since the special assessment was invalid, it necessarily follows that the  
23 members are not required to pay it.

24 6. Members of ACBC who have not paid the special assessment levied on  
25 August 13, 2013, remain members in good standing and are, therefore, entitled to vote  
26 at membership meetings and are eligible to serve as directors if they are otherwise in  
27 good standing as defined by the Bylaws of ACBC.

28  
29 7. The Defendants, their agents and all persons acting on their behalf or  
30 together with them must be enjoined from the actions described in the temporary  
31

1 restraining order if the Plaintiffs' rights are to be preserved until final hearing in this  
2 action.

3 8. The Defendants' rights in this action will not be adversely affected and  
4 the Defendants will not be substantially inconvenienced by issuance of a preliminary  
5 injunction enjoining the above described acts.  
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### 10 III. ORDER

11 The court having entered findings of fact and conclusions of law, and further  
12 finding that just cause exists for the entry of this order, now, therefore, it is

13 ORDERED that, pursuant to the parties' CR 2A stipulation placed in the record  
14 at the hearing held November 27, 2013, paragraph 1 of the Temporary Restraining  
15 Order entered on September 11, 2013, shall remain in full force and effect until further  
16 order of this court and the same shall NOT expire after fourteen days. The Defendants  
17 and their successors, are restrained from taking any action, including the employment  
18 of third parties, contractors or subcontractors, which action furthers or allows, in any  
19 manner, the demolition, decommissioning, filling, damaging, destroying, covering,  
20 inactivating, altering or otherwise rendering unusable, temporarily or otherwise, the  
21 swimming pool complex and all related facilities owned and operated by the Admiral  
22 Cove Beach Club and located within the Plat of Admiral's Cove, Island County,  
23 Washington. It is further  
24

25  
26 ORDERED, that the Plaintiffs' request for a Temporary Injunction relating to the  
27 other matters presented in Plaintiffs' motion is hereby GRANTED. The Defendants,  
28 and each of them, and their successors, are temporarily enjoined from engaging in any  
29 of the following activity pending final disposition of this case:  
30

31 A. From imposing or levying or attempting to enforce or collect an assessment  
32 of any type against each or any lot within the plat of Admiral's Cove, the purpose of

1 which is to pay for any part of the costs of decommissioning, filling, damaging,  
2 inactivating, covering, demolishing or in any manner grading, removing, destroying or  
3 otherwise rendering unusable, the swimming pool and related facilities owned by the  
4 Admiral's Cove Beach Club.

5 <sup>From</sup>  
6 B. Failing to properly maintain the Admiral's Cove Beach Club swimming pool  
7 so that its condition deteriorates or worsens beyond conditions that existed on  
8 September 11, 2013. The term "properly maintain" shall include the usual and  
9 customary maintenance tasks previously undertaken by the Board of Directors in  
10 accordance with bylaws of ACBC and pursuant to usual practices, and any  
11 maintenance required by federal, state, or local law.

12 C. From attempting to take any action that is contrary to or inconsistent with the  
13 express terms of a motion unanimously approved by the members of Admiral's Cove  
14 Beach Club at the October 27, 2012 annual meeting of the membership, unless that  
15 motion is repealed or modified by action properly taken in accordance with the Bylaws  
16 and not inconsistent with the Court's findings and conclusions set forth in this order or  
17 the express terms of this temporary injunction.

18  
19 D. From failing to properly schedule annual membership meetings as required  
20 by the ACBC Bylaws. The Defendant Board of Directors shall immediately schedule an  
21 annual meeting of the members of the Admiral's Cove Beach Club which meeting  
22 shall be treated as the annual meeting for calendar year 2013. The meeting shall be  
23 scheduled in accordance with the Bylaws of ACBC, ~~and shall be set at a time no earlier~~  
24 ~~than January 18, 2014.~~ At that meeting the new board will be seated. The election of  
25 new board members will have to be completed prior to the meeting in a process  
26 consistent with the Bylaws.  
27

28 E. From taking any action at or before this or any other regularly scheduled  
29 annual meeting of the members of Admiral's Cove Beach Club, which directly or  
30 indirectly attempts to or actually does:  
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1           4.1 deny or refuse to accept a nomination for Director of the ACBC  
2 Board of Directors, of any member of the corporation who is in good standing as <sup>or otherwise entitled</sup>  
3 defined by the Bylaws of the Admiral's Cove Beach Club; ~~was previously~~

4           4.2 prevent a member of the corporation in good standing from  
5 running for election to the ACBC Board of Directors <sup>before the</sup> at any meeting of the membership  
6 held for ~~such~~ <sup>the</sup> purpose <sup>of seating the new board</sup> unless the person is expressly precluded from doing so by the  
7 terms of the corporation's bylaws.

8           4.3 ~~treats~~ a member who has not paid the special assessment levied  
9 by the Board of Directors on August 13, 2013, as a member "not in good standing" or  
10 otherwise ineligible to hold office or vote at the annual meetings.

11           4.4 ~~attempts~~ to present a motion or propose any action at the  
12 membership meeting, the purpose of which is to obtain funding for or approval of any  
13 action resulting in the removal or decommissioning or failure to maintain the ACBC  
14 swimming pool. It is further

15           ORDERED, that, pursuant to CR 65(c), this order is conditioned on Plaintiff first  
16 providing security in the amount of \$100.00, for the payment of damages which may  
17 be incurred by a party found to be wrongfully restrained by this order. It is further

18           ORDERED that the Plaintiffs' motion to have the Defendant Board of Directors  
19 of ACBC held in contempt for failing to conduct the ACBC annual meeting within the  
20 time prescribed by the Bylaws is DENIED. The Court is unable to find that the  
21 Defendants or any of them "intentionally" violated the terms of the Temporary  
22 Restraining Order. The Plaintiffs' request for an award of attorney's fees for having to  
23 bring this motion is also, therefore, DENIED.

24 Signed in open court this 30 day of December, 2013.

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3/Alan R Hancock  
JUDGE ALAN R. HANCOCK

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Presented By:

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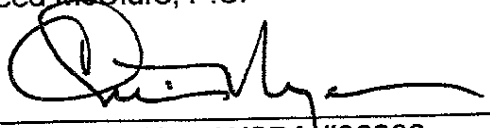
Approved as to form; copy received;  
Presentation waived:

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