

**FILED**

JAN 17 2014

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

**NO. 317480**

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

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CHEWELAH GOLF AND COUNTRY  
CLUB ASSOCIATION,

Respondent and Cross-Appellant,

v.

WILBUR "WOODY" WILLIAMS,

Appellant.

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**CROSS-APPELLANT'S REPLY BRIEF**

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PHILLABAUM, LEDLIN, MATTHEWS & SHELDON PLLC  
Stephen D. Phillabaum, WSBA# 11268  
1235 N. Post Street Suite 100  
Spokane, WA 99201  
509-838-6055

## I. INTRODUCTION

Since 2007 Mr. Williams has been attempting to stop golf play and maintenance on a portion of Chewelah Golf & Country Club's (hereinafter "CGCC") golf course. This action was brought to enjoin Mr. Williams's interference, establish the Association's right to golf play and maintenance, and seek payment of association fees from Mr. Williams. The trial court granted the Association's Motion for Summary Judgment establishing the Association's right to golf play and maintenance but also granted Mr. Williams' motion ruling that Mr. Williams does not owe association fees. This appeal and cross-appeal followed.

## II. REPLY TO MR. WILLIAMS ARGUMENT RELATED TO CLAIM FOR MONEY DUE ON ACCOUNT

The Court must deny a motion for summary judgement if the record shows any reasonable hypothesis that entitles the non-moving party to the relief sought. Mostrom v. Pettibon, 25 Wn. App. 158, 607 P.2d 864 (1980). The Court must construe all facts and reasonable inferences in the light most favorable to the non-moving party. Lybbert v. Grant County, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000). It is reasonable to infer that CGCC's intent when drafting the original covenants was for the

membership requirement to continue beyond the time of initial lot purchase. The golf course is an ongoing improvement needing continuous maintenance and care. It is obvious that such maintenance and care will need to be continued or the course will become an overgrown eyesore. It is also reasonable to infer that maintaining and operating a golf course would require continuing inflows of funds through continued membership from lot owners whose property values are increased by their location. The finder of fact needs to hear evidence of purpose, intent, and understanding to determine the meaning of the covenant. The facts and evidence on this issue require a more thorough evaluation than was conducted prior to summary judgment.

Mr. Williams cites Rodruck v. Sand Point Maintenance Comm'n, 48 Wn.2d 565, 295 P.2d 714 (1956) in his argument however a careful reading of this case supports CGCC's argument. In Rodruck the court considered covenants running with the land in conjunction with assessments which were associated with the covenant. The court looked at the deeds of trust and correlated documents such as articles of incorporation and bylaws to conclude that the covenant ran with the land,

and that the covenant benefited the property resulting in the requirement to pay assessments. The facts of this case are sufficiently similar.

Here, the original covenants provided that:

“12. Membership in the Chewelah Golf & Country Club Association shall be required prior to ownership of any lot in the Chewelah Golf & Country Club Subdivision.”

*CP at 355.* Mr. Williams admits he received copies of the covenant when he purchased his properties. *CP at 441.* It is evident that the covenant runs with the land. *CP at 88.*

The Court in Rodruck also looked at a covenant and stressed “the intent and substantial effect of the covenant rather than its form.” Rodruck v. Sand Point Maint. Comm'n, 48 Wn.2d 565, 575, 295 P.2d 714, 720 (1956). Here, CGCC’s intent in including this covenant was to “preserve and enhance the values and amenities of the community.” *CP at 82.* Section 12 furthered this intent by including this funding mechanism to pay for development and operation of the golf course. *CP at 370.* The substantial effect of this covenant is to provide benefit to lot owners, like Mr. Williams. When Mr. Williams obtained the property he not only benefited from obtaining the lot but he also benefited from the right of common enjoyment associated with membership to the golf course

connected to his property. Mr. Williams benefits from the continued maintenance. Mr. Williams benefits from the value of lots being located on a fairway. *CP at 365*. Because Mr. Williams continues to benefit he should continue to maintain his membership consistent with the original intent when the covenant was drafted.

Furthermore, the covenant should be considered in conjunction with CGCC's articles of incorporation and bylaws in order to determine the burden placed on Mr. Williams lots by this covenant. Rodruck, 48 Wn.2d at 577. The articles of incorporation state that CGCC was formed as a non-profit corporation in 1975 and declare the corporation's purpose to be construction, maintenance, and operation of the golf course and country club with residences. *CP at 370; 374 - 379*. The Association was empowered to collect money. *Id.* By-laws of the Association empower the board of directors to impose dues on membership: "The Board of Directors shall have authority to impose dues on any membership owner therefor." *CP at 348*. Bylaws, in effect, can constitute a contract and bind Mr. Williams to any assessments owed. See Rodruck v. Sand Point Maint. Comm'n, 48 Wn.2d 565, 578, 295 P.2d 714, 722 (1956); Seattle Trust Co. v. Pitner, 18 Wash. 401, 51 P. 1048 (1898); Child v. Idaho Hewan Mines,

155 Wash. 280, 284 P. 80 (1930). The Board of Directors therefore are allowed to determine assessments and those assessments are enforceable under the covenant.

The trial court should not have granted summary judgment against CGCC's claim for membership fees. Mr. Williams admits he received copies of the bylaws when he purchased his properties. *CP at 442-443*. The Association has imposed dues in Division One of the golf course development and Mr. Williams has not paid his membership dues. *CP at 348*. Mr. Williams understood that an assessment was due and he did not want to pay. *CP at 281*. The trial court did not sufficiently consider correlated documents such as the articles of incorporation and the bylaws. Reading these correlated documents together with the covenant make the issue inappropriate for summary judgment. Furthermore, the trial court did not consider inferences as to intent and substantial effect in the light most favorable to CGCC. For all of the above stated reasons summary judgment was inappropriate on this issue.

### **III. CONCLUSION**

CGCC's appeal for the assessment of fees against Mr. Williams to fund the golf course should be granted. There remains the material issue

to be decided regarding whether Covenant 12 requires continuing membership as well as the material issue of whether the correlated documents being read in conjunction with the covenant establish a contractual duty on Mr. Williams to pay the assessment. These issues considered in the light most favorable to CGCC along with the reasonable inference that the membership requirement was to continue beyond the initial purchase meant that summary judgment was inappropriate. Summary judgment in favor of Mr. Williams should be reversed and the matter remanded to the trial court for further proceedings.

Respectfully submitted this 17<sup>th</sup> day of January 2014

**PHILLABAUM, LEDLIN, MATTHEWS  
& SHELDON, PLLC**

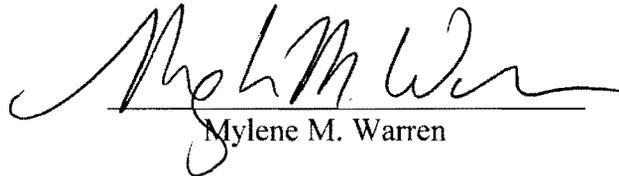
By:  #46519 For:  
Stephen D. Phillabaum, WSBA #11268  
Attorneys for Plaintiff/Appellant  
1235 N. Post, Suite 100  
Spokane, WA 99201  
Phone: (509) 838-6055  
Fax: (509) 625-1909  
E-mail: [stevep@spokelaw.com](mailto:stevep@spokelaw.com)

**CERTIFICATE OF SERVICE**

I declare under penalty of perjury of the laws of the state of Washington that on this date, a true and correct copy of the document to which this declaration is attached was served by the method indicated below, and addressed to the following:

Loyd A. Willaford	<input checked="" type="checkbox"/>	U.S. Mail
Webster Law Office, PLLC	<input type="checkbox"/>	Hand Delivered
116 N. Main St.	<input type="checkbox"/>	Overnight Mail
Colville, WA 99114	<input type="checkbox"/>	Telecopy (Fax):
	<input checked="" type="checkbox"/>	Email: <a href="mailto:loyd@websterlawoffice.net">loyd@websterlawoffice.net</a>

DATED this 17<sup>th</sup> day of January, 2014.

  
Mylene M. Warren