

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

**LAGOON POINT IMPROVEMENT CLUB,
a Non-profit Corporation,**

Plaintiffs

vs.

**HERSCHEL FREEMAN and LAURIE
FREEMAN, husband and wife; BRUCE
HOWARD and SARAH HOWARD,
husband and wife; FERN RAYMOND,
Personal Representative of the Estate
of JOHN F. RAYMOND; TIMOTHY
GREENLEAF and REBECCA JANE
ROE, husband and wife; DONOVAN R.
FLORA and KATHRYN GOATER,
husband and wife; DENIS TRULOCK;
GERALD W. GELFAND and VERENA
GELFAND, husband and wife;
DOUGLAS GOUGE and NANCY
LEIDHOLM, husband and wife; and
WILLIAM J. BYRNE, a single man,**

Defendants.

No. 04-2-00387-8

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS MATTER was tried to the Court, without jury upon stipulated facts on November 7, 2005. The Honorable Vickie I. Churchill presided at trial. The claims presented at trial for adjudication were as follows:

1. Plaintiff Homeowner's Association's claims against each Defendant for payment of dues, assessments, fees and applicable penalties associated with jetty repair.
2. Defendants' counterclaim that Plaintiff's attempts to collect such obligations against them are illegal and that said obligations are the sole obligation of certain other property owners.

Claims against Defendants Greenleaf, Roe, Flora, Goater, Trulock, Freeman, and Howard were resolved prior to trial.

Plaintiff appeared at trial by and through its attorney of record, Michael M. Waller of Zylstra Beeksma & Waller, P.L.L.C., and Defendants Raymond, Byrne, Gelfand, and Gouge and Leidholm appeared by and through their attorney M. Douglas Kelly of Kelly, Harvey and Carbonne, L.L.P. This matter was tried on stipulated facts entitled "LPIC's Stipulated Statement of Facts" are filed herein.

Based upon the evidence presented at trial the Court incorporates the *LPIC Stipulated Statement Facts* herein and makes the following Conclusions of Law:

1. The restrictions contained in the dedication of and restrictions affecting the Plat of Lagoon Point recorded July 10, 1950, under Island County Auditor's File No. 78936 ("Dedication") apply to all properties and all divisions of the Plats of Lagoon Point including Division No. 1 Division No 2, Division No. 3, Division No. 4, and the Plat of View Tracts.
2. Lots A, B, C and D and all improvements on said lots are the undivided and common property of the owners of all lots within Lagoon Point.
3. Improvements including the boat ramp, parking lot and jetty within Lot C are intended for the joint use and enjoyment of all properties within Lagoon Point, including those within Division No. 1.
4. The Dedication language is not ambiguous and development, maintenance and upkeep of Lots A, B, C and D and improvements thereon, which includes the jetty on Lot C, are the joint obligations of all property owners within all divisions of the Plat of Lagoon Point including Division 1, Division 2, Division 3, Division 4, and the View Tracts. Maintenance and upkeep of the jetty on Lot C are the

joint and equal obligations of all property owners within all divisions of the Plat of Lagoon Point including Division 1, Division 2, Division 3, Division 4, and the View Tracts.

5. Responsibility for maintenance and upkeep of that portion of the jetty extending beyond Lot C into the community protective jetty easement is the joint and equal responsibility of the owners of all lots within all divisions of Lagoon Point, including Division No. 1.
6. Plaintiff, Lagoon Point Improvement Club is the validly designated organization having responsibility for the development, maintenance and upkeep of Lots A, B, C and D and improvements thereon, including the jetty located within Lot C and/or within the community protective jetty easement.
7. The assessment made by the Plaintiff to the Defendants after vote of the members of the association was legally and properly assessed pursuant to the 1977 resolution, applicable *Bylaws* of the Lagoon Point Improvement Club and the authorization approved by the members of the association.
8. Judgment should be entered in favor of the Plaintiff against each Defendant for the \$195 jetty assessment, penalties as provided in the association *Bylaws* in Article II, Section 2, and the counterclaims of each Defendant shall be dismissed.
9. Judgment shall enter against Defendant Raymond in the amount of \$492.45. Judgment shall enter against Defendant Byrne in the amount of \$597.45. Judgment shall enter against Defendants Gelfand and their marital community in the amount of \$600.60. Judgment shall enter against Defendants Gouge and Leidholm in the amount of \$529.73.
10. The Plaintiff shall also have judgment against each Defendant for Plaintiff's court costs incurred herein including statutory attorney's fees.

DONE IN OPEN COURT this 19th day of December, 2005.

/s/ Vickie I. Churchill

JUDGE/COURT COMMISSIONER

<i>/s/</i> Vickie I. Churchill JUDGE/COURT COMMISSIONER	
Presented by: <i>/s/</i>	Copy Received: Approved for Entry: Notice of Presentation Waived: <i>/s/</i>
MICHAEL M. WALLER, WSBA #6310 Zylstra Beeksma & Waller, P.L.L.C. Attorney for Plaintiff	M. DOUGLAS KELLY, WSBA #6550 Kelly Harvey and Carbonne, L.L.P. Attorney for Defendants