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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

Desert Mountain Club, Inc.,  
Plaintiff,

vs.

Eric Graham and Rhona Graham, husband  
and wife,  
Defendants.

No. CV2014-015333

**Motion to Dismiss**

(Assigned to the Honorable David Gass)

This motion to dismiss is under ARIZ. R. CIV. P. 12(b)(6). The plaintiff's complaint does not state a cause of action against the Grahams as a matter of law and must, therefore, be dismissed.

**I. STANDARDS FOR A MOTION TO DISMISS**

The standards for a motion to dismiss are very clear. The Arizona Supreme Court has held:

"Arizona follows a notice pleading standard." *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419 ¶ 6, 189 P.3d 344, 346 (2008). In determining if a complaint states a claim on which relief can be granted, courts must assume the truth of all well-pleaded factual allegations and indulge all reasonable inferences from those facts, but mere conclusory statements are insufficient. *Id.* 218 Ariz. 417 ¶ 7, 189 P.3d 344. "[C]ourts look only to the pleading itself" when adjudicating a Rule 12(b)(6) motion. *Id.* If "matters outside the pleading" are considered, the motion must be treated as one for summary judgment. ARIZ. R. CIV. P. 12(b)(6). A complaint's exhibits, or public records regarding matters referenced in a complaint, are not "outside the pleading," and courts may consider such documents without converting a Rule 12(b)(6) motion into a summary judgment motion. *See Strategic Dev. & Constr., Inc. v. 7th & Roosevelt Partners, LLC*, 224 Ariz. 60, 63 ¶ 13, 226 P.3d 1046, 1049–50 (App. 2010).

*Coleman v. City of Mesa*, 230 Ariz. 362, 356 ¶ 9, 284 P.3d 863, 867 (2012).

## II. APPLICATION OF STANDARDS TO PLAINTIFF'S COMPLAINT

Plaintiff's complaint acknowledges that the defendants resigned their membership to Desert Mountain Golf Club on May 20, 2014; indeed, exhibit J to the complaint is a copy of the May 20, 2014, resignation. The one paragraph that describes this notice of resignation attempts to marginalize the notice by saying, in a conclusory fashion, that this notice was a mere attempt at resignation:

On or about May 20, 2014, Defendants attempted to resign their Membership, effective May 31, 2014, through an e-mail communication with the Club. In that email, Defendants claimed that they had "no further obligation to Desert Mountain and will not pay any charges that reflect membership in the DMC after that date." A true and correct copy of Defendants' May 20, 2014, e-mail is attached as Exhibit J.

Complaint, pg 6, ¶ 20.

In addition to the conclusory statement that this notice of resignation was a mere attempted resignation, the complaint is full of lots of other conclusory statements about the effects of the various agreements and bylaws attached to the complaint. The complaint, however, ignores the law in the state of Arizona.

A member may resign at any time, except as set forth in or authorized by the articles of incorporation or bylaws.

A.R.S. § 10-3620(A).

The foregoing statute is from Title 10 chapter 29 of the ARIZONA REVISED STATUTES. This is the part of the corporate code that deals with non-profit corporations.

The plaintiff's complaint alleges that it is a non-profit corporation in paragraph one. The complaint alleges that the defendants are members of this non-profit corporation at paragraph five of the complaint. There are lots of conclusory statements in the complaint about the inability of a member to resign, but there is nothing in any of the bylaws attached to the complaint, nor the articles of incorporation, which are a public record, that restrict in any fashion the right by statute of a member of a non-profit organization to resign. A certified copy of the articles of incorporation are attached as exhibit A for the court's convenience.

1 The complaint alleges that the defendants have paid no dues or other charges since they  
2 resigned on May 20, 2014, and paragraph thirty-two of the complaint claims damages because the  
3 defendants have failed and refused “to pay dues and other charges properly imposed against their  
4 account since the date of the attempted resignation.” But a member is not obligated to pay after a  
5 resignation. Indeed, A.R.S. § 10-3620 only obligates a resigning member to pay for obligations  
6 incurred or commitments made prior to the resignation.

### 7 **III. THE CLAIM FOR DECLARATORY RELIEF FAILS**

8 This is a breach of contract case that does not fit within the scope of a declaratory judgment  
9 action. A declaratory judgment action is supposed to be something that resolves a controversy.  
10 A.R.S. § 12-1835. Any controversy is, of course, resolved when there is an action for breach of  
11 contract. So the declaratory relief sought in this case is improper.

### 12 **IV. CONCLUSION**

13 The defendants had the absolute statutory right to resign as members of the plaintiff, a non-  
14 profit corporation. The plaintiffs did resign. They have no pre-resignation obligations of any sort.  
15 Plaintiff’s complaint fails to state a claim and must be dismissed.

16 Dated this 25th day of June 2015.

17  
18 /s/ Daryl M. Williams  
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24 The Honorable David Gass  
25 Maricopa County Superior Court  
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